IN THE

Supreme Court of the United States

October Term, 1920

CHARLES E. SMITH, *Appellant*,

against

KANSAS CITY TITLE AND TRUST COMPANY, FEDERAL LAND BANK OF WICHITA, KANSAS, AND FIRST JOINT STOCK LAND BANK OF CHICAGO, ILLINOIS,

Appellees.

No. 199

BRIEF FOR APPELLEE, FEDERAL LAND BANK OF WICHITA, KANSAS

W. W. WILLOUGHBY,
Of Counsel for Appellee, Federal Land Bank of Wichita, Kansas.

J. E. FORD COMPANY, PRINTERS AND PUBLISHERS, BALTIMORE.

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Appellees.

No. 199

Appeal from the District Court of the United States for the Western Division of the Western District of Missouri

BRIEF FOR APPELLEE, FEDERAL LAND BANK OF WICHITA, KANSAS

The provisions of the Federal Farm Loan Act of July 17, 1916, as amended by the Act of January 18, 1918 are sufficiently set forth in the other briefs filed in this case and will not, therefore, be here given.

This brief is concerned with the constitutionality of the Acts of July 17, 1916, and January 18, 1918 in so far as they relate to the Federal Land Banks. It is not concerned with the provisions relating to the Joint Stock Land Banks, which provisions are clearly "separable" from those relating to the Federal Land Banks. Indeed, Section 34 of the Act expressly provides for this.

Governing Propositions of Constitutional Law.

At the outset certain constitutional doctrines may be stated which, it is believed, will not be contested by counsel for the Appellant nor questioned by the Court. In the argument which follows it will be shown that these doctrines, if given their full and proper application, amply uphold the validity of the provisions which Congress has made for the establishment of the Federal Land Banks, and for the exemption of their bonds from federal, state, municipal and local taxation as declared in Section 26 of the Act of 1916.

The constitutional doctrines to which reference has been made are so well established, and have been so frequently applied, that it will not be necessary to burden the brief, or tax the patience of the Court, with numerous citations of cases. The doctrines are as follows:

1. The question of the validity of an Act of Congress is solely one of constitutional power. This granted, considerations of expediency, of motive, or of results effected in fields not primarily subject to federal regulation, become irrelevant.

2. If an instrumentality or mode of regulation can be reasonably regarded as efficient to carry out, or in any wise to aid in carrying out, a valid purpose of Congress, its constitutionality will be upheld.

3. In determining the fact whether a given instrumentality or mode of regulation is calculated to aid in carrying out a valid purpose of Congress, the Courts will be governed by the judgment of Congress if it can be made to appear that the instrumentality or the mode of regulation can conceivably, that is, to the mind of a rational man can reasonably, be regarded as calculated to aid in the carrying out of the legislative will.

4. A federal agency is not subject to taxation by a state or by any of its political subdivisions, except with the permission of Congress.

5. Congress has the power to give financial aid to any undertaking that will promote the "general welfare" of the American people. This condition is satisfied if the purpose is general and public in character. The fact that particular individuals or localities may incidentally receive special benefit from the financial aid thus given is not material, if the end sought, or to be expected, is one of general interest. Federal aid may be extended in the form of moneys directly appropriated, of exemption from federal taxation, or of a loan of federal credit. In each case the assistance is financial and may fairly be considered as equivalent to an appropriation of money.

PURPOSES OF THE ACT OF 1916

The purposes of the Act of July 17, 1916 are truly set forth in its title, and, as enumerated, show that Federal Land Banks are intended by Congress to serve two purposes, both of which are within the acknowledged powers of Congress. These two functions which the Banks are to exercise are:

I. *To serve as federal financial agencies*

(a) to furnish a market for United States Government bonds,

(b) to provide depositaries for Government moneys, and

(c) to serve, generally, when needed, as financial agencies of the National Government.

II. *To appropriate money in order to promote agriculture throughout the Union*

(a) by furnishing capital for agricultural development,

(b) by creating standard forms of investment based upon farm mortgages, and

(c) by equalizing rates of interest upon farm loans.

The power to promote the agricultural interests of the country has not been given to Congress by the Constitution in express terms. It is, however, too clear for argument, that the "general welfare" of the people is promoted by any measure which tends to render more efficient, throughout the Union, the carrying on of farming, by assisting the farmers to secure the means whereby they may bring new lands under cultivation or make better and more intensive use of lands already cultivated. Congress, therefore, clearly has the constitutional power to make such appropriations as are provided in the Federal Farm Loan Act, to authorize the investment of federal funds, to the extent that may be needed, in the capital stock of the Federal Land Banks, and to give further federal assistance in the form of the tax exemptions provided for in Section 26 of the Act. The tax exemptions thus rest upon a double constitutional basis: as a mode of extending federal financial aid under its appropriating power to an undertaking that will advance the "general welfare" of the people; and as a means of rendering more efficient, and protecting from possible State interference, a federal financial agency.

Functions of the Banks Primary in Character.

It will be observed that this grouping of the purposes of the Farm Loan Banks into two classes is not one which attempts or admits a distinction between the primary and incidental purposes of the banks. This distinction has no application so long as the Federal Government lends its financial aid in the form of grants of money or credit, special exemption from taxation or otherwise with a view to promoting agricultural interests of the country. For, so long as this is the case, the Banks serve as federal governmental agencies for applying effectively and economically, the federal financial aid that has been extended, just as much as they serve as governmental agencies for the depositing of public funds, the furnishing of a market for government bonds, and for the performance of any other financial function that may be entrusted to them.

Irrelevancy of Arguments as to Nature of Banks.

It will further appear from what has been said that the argument of Counsel for the Appellant that the Federal Land Banks are not, properly speaking, banks at all, in a proper sense of the word, is irrelevant. For, if it should be admitted, *arguendo,* that this is so, it would still remain a fact that the "Banks" are financial agencies for carrying into effect constitutional purposes of the National Government. In other words, the Appellees need rely upon the cases upholding the constitutionality of the National and Federal Reserve Banks only insofar as they lay down the broad principle that in carrying out a constitutional purpose Congress has a choice of means and may create, and protect from possible state

interference by taxation or otherwise, agencies equipped with such powers as will enable them to operate efficiently as federal governmental instrumentalities.

Continuing and Permanent Functions of the Banks to Serve as Financial Agencies of the Government.

If it be argued that the time will come, and is, indeed, foreseen and provided for in the Act itself, when the United States Government will no longer have any of its funds invested in the capital stock of the Banks or in their bonds, and that the Banks will then no longer serve as agencies for applying and administering direct federal financial aid, three sufficient replies may be made.

In the first place, such a situation has not yet arisen and therefore no argument applicable to the case at bar, can be predicated upon it.

In the second place the system of Banks will still serve as the instrumentality which the National Government has created and employs for the purpose of providing that funds will be made available for promoting the agricultural interests of the country. In this connection it will be noted that the resources of the Banks, obtained through their bonds, are to be devoted exclusively to this purpose, and that any profits that may be earned by the Banks return into the hands of the borrowers upon the farm mortgages who will be the sole owners of the shares of the Banks.

In the third place, waiving these answers, the Banks will continue to operate as federal agencies for the custody of public funds, for providing a market for federal government bonds, and for performing such other financial functions as may be imposed upon them.

The function of the Banks as financial agencies of the

National Government is a continuing and permanent one. This will continue to be, in contemplation of the law, their primary and constitutional function; and, if it be necessary to do so, it can be safely asserted that their activities as agencies for lending money on farm mortgages and securing money for such loans by the issuance of bonds are incidental thereto. The constitutionality of these activities as incidental is defensible upon exactly the same grounds as those that have upheld the power of the National Banks to engage in a general banking business for the private profit of their stockholders. There is no functional or organic connection between the general banking business which the National Banks are permitted to carry on, and their financial services to the Government. But, as the Court has held, it is not possible, as a practicable proposition, that the National Banks should exist and thus be able to perform their primary governmental functions, unless they were vested by Congress with the incidental power to do a general banking business for the private profit of their stockholders. And it has recently been held that they may even act as trustees, executors, administrators of private property or estates, or as registrars of stocks and bonds. (First National Bank *v.* Union Trust Co., 244 U. S. 416.) In exactly the same way, it is proper and necessary that the Federal Land Banks should have the power to make loans to farmers secured by mortgages upon farm land, and to secure the funds for such purpose by issuing bonds secured by the mortgages thus acquired. The activities of the Farm Loan Banks in this respect are indeed complementary to those of the National Banks, these latter providing commercial credits (until the Federal Reserve Act of 1913 the National Banks were not permitted to loan money upon real estate security, and even now may

make such loans on farm lands for no longer than five years, and to an amount not greater than twenty-five per cent of capital and surplus or one-third of their time deposits), the Federal Land Banks providing agricultural credits.

In connection with the function of the Banks as financial agencies of the Government it will be noted that the Banks are obligated by Section 5 of the Act of 1916 to invest at least one-fifth of their quick assets in Government bonds and that the Secretary of the Treasury is expressly authorized (Section 32) in his discretion, upon the request of the Federal Farm Loan Board, to make deposits of public funds in the Banks. Furthermore, the Act (Section 6) authorizes the Banks to be employed as "financial agents of the Government," and they are obligated to "perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them."

Potential Value of the Banks as Financial Agents of the Government.

This provision in general terms, without limitations as to specified purposes, that the Banks may be employed as financial agents of the National Government and that, when so employed, they shall be obligated to perform all reasonable duties as such, is of very great constitutional importance. From this provision it appears in express terms that Congress has deemed it wise that these institutions shall be in existence, which, as occasion or need arise, may be instantly used by the National Government for its financial purposes. Thus, for example, during the summer of 1918, while the war was in progress, it was deemed desirable that seed-grain loans should be made to farmers in certain sections of the

country suffering from drought. The Farm Loan Banks of Wichita, St. Paul and Spokane were at once seized upon as convenient instrumentalities through which this aid might efficiently and economically be extended, and something like fifteen thousand such loans were thus made. This federal service the banks performed without expense to the National Government beyond actual expenses incurred.

This incident, important in itself, is still more important as an illustration of the advantage to the National Government, and therefore the constitutional justification, in having in existence and full operating efficiency, instrumentalities that may instantly be availed of when need or convenience arises. A striking demonstration of this was the tremendous value to the Government, when it entered the war against Germany, of having the Federal Reserve Banking and the Federal Income Tax Systems in existence and operation. It became necessary at once, not only to raise vast sums by popularly subscribed loans, but to multiply many times the ordinary revenue of the Government. The fact that a federal income tax had been in existence for a number of years, and an elaborate system built up for its administration, enabled the Government without delay greatly to increase its income from taxes simply by changing the rates of the tax. The Federal Reserve System that had been established and was in full working order, became immediately the efficient agency through which not only were billions of credit secured by the Government, but the banks throughout the country enabled to advance liberal credits to individuals desiring to subscribe for the Liberty and Victory bonds of the Government. It is, indeed, difficult to conceive how the Federal Government could have been able to meet the enormous financial

tasks imposed upon it during the war had it not had at hand these two instrumentalities. And thus, by analogy, it can be seen of what potential value it may be to the Government, to have in existence a system of Federal Land Banks which may be used as occasion or exigency may arise. Little force is, then, to be attached to any argument against the constitutionality of the banks based upon the comparative importance in the past or present of activities of the banks as federal financial agents as compared with their function of supplying loans secured by farm mortgages. Congress has declared that, in its opinion, it is wise to have these banks in existence, and ready to serve, when needed, as fiscal agencies of the Government, and that would seem to be decisive.

Distinction Between Primary and Incidental Powers is not, Constitutionally, Quantitative in Character.

In truth, moreover, even were regard not had for the potential value to the Government of the Federal Land Banks, there would still remain the fact that the distinction between the primary and incidental functions of a government agency is not a quantitative one. That is to say, it cannot properly be argued that, because, for the time being, or even as a permanent proposition, one branch of the work of an agency is, economically or socially, more important than the other, therefore, the more conspicuous activity is, from the constitutional point of view, its primary function, and the other merely incidental thereto. If an instrumentality serves as an agency of the Government for carrying out one or more of its constitutional powers, that service constitutes, from the constitutional point of view, its primary purpose, even though, if regarded from any other than gov-

ernmental point of view, its other activities are far more extensive. Upon this point the holding of the Court in McCray *v.* United States (195 U. S. 27) is sufficient. In that case it was argued that a federal excise tax of ten cents a pound upon oleomargarine artificially colored to resemble butter (no tax being laid upon natural butter) was unconstitutional because the tax was so high as to be practically prohibitive to the manufacture and sale of oleomargarine; that this was known to Congress; that, therefore, it could not have been the primary purpose of Congress, by enacting the law, to obtain a revenue for the Government, but that, instead, the motive was to protect the dairy interests of the country against the competition of oleomargarine manufacturers. There was, in fact, no question but that the act would have far greater effect in this respect than as a producer of revenue for the National Government. The Court, however, finding, as it was obliged to do, that the act was a veritable excise measure and as such within the constitutional power of Congress to enact, declared that it would be inappropriate upon the Court's part to estimate how important the act would prove as a revenue measure and, from that fact, to determine the motive of Congress in its enactment. Indeed, the motive of Congress could not be judicially inquired into at all. The only question to be considered, the Court held, was whether the charge provided for was in its nature a tax and, as such, levied in conformity with the requirements of the Constitution. This determined affirmatively, the constitutionality of the act was established.

In the earlier case of *Re Kollock*, (165 U. S. 536) Mr. Chief Justice Fuller, speaking for a unanimous court, had said: "The act before us is, on its face an act for levying taxes, and although it may operate in so doing

to prevent deception in the sale of oleomargarine as and for butter *its primary object must be assumed to be the raising of revenue.*" And, as the Court said in the McCray case, after quoting this statement, it was not necessary to go beyond this, but that it would further extend its opinion only in deference to the earnestness with which counsel had assailed the validity of the act. To the argument that the judiciary might interfere when, in its opinion, one of the other departments of Government had exerted its lawful powers to attain an end not within the scope of federal authority, the Court, in emphatic language said: "The proposition, if sustained, would destroy all distinction between the powers of the respective departments of the Government, would put an end to that confidence and respect for each other which it was the purpose of the Constitution to uphold, and would thus be full of danger to the permanence of our institutions."

Judged from this point of view the constitutionality of the Federal Farm Loan Act rests upon a firmer basis, and is further removed from possible scrutiny as to its major purpose, or its primary end, than were the acts involved in the McCray case, for already the Banks have served a valuable purpose as financial agencies of the Government, and their potential future value as such may easily be very great indeed.

In result, then, we come to this: If Congress has made provision for the creation of certain agencies, which it declares to be federal governmental agencies and, as such, subjects them to vigorous control and supervision, and if, in fact, it has made use of them as such, then, constitutionally speaking, that is their primary function, and it only remains to determine whether the other functions exercised by them as such are properly incidental

thereto. When thus regarded, the doctrines laid down in the National Bank cases are decisive, for, it will scarcely be denied that to even a greater extent than is the case with regard to the doing of a general banking business by the National Banks, in order that they may exist and efficiently perform their primary governmental functions, it is necessary that the Federal Land Banks should have and exercise the powers given to them with regard to the making of loans and the issuance of bonds to secure the funds for such loans, in order that they may exist.

The determining force that is to be ascribed to a declaration of Congress that certain incidental powers need to be possessed by its agencies in order that they may function as such, is shown in the following cases. In Osborn et al. *v.* The Bank of the United States (Cf. Wh. 739), Chief Justice Marshall, speaking of the private banking functions of the Bank, said: "Congress was of opinion that these facilities were necessary to enable the bank to perform the services which are exacted of it, and for which it was created. This was certainly a question proper for the consideration of the national legislature." So, in the present case, Congress has exercised a proper discretionary right in determining the activities that the Federal Land Banks may exercise in order that they may serve as agencies of the Government.

In First National Bank *v.* The Union Trust Co. (244 U. S. 416) the Court below had argued that while there might be a connection between the business of banking and the carrying on of federal fiscal operations, there was none, apparently, between such operations and the business of settling estates or acting as the trustees of bondholders. To this the Supreme Court replied: "But we are of opinion that the doctrine thus announced not

only was wholly inadequate to distinguish the case before us from the rulings in McCulloch *v.* Maryland and Osborn *v.* Bank of United States, but, on the contrary, directly conflicted with what was decided in those cases." The lower court, it was declared, had disregarded the discretion of Congress and had improperly exercised its judicial discretion "for the purpose of determining whether it was relevant or appropriate to give the bank the particular functions in question."

The constitutionality of the Federal Land Banks being established as agencies of the Federal Government, it follows, as a matter of course, that they, and the means which they employ—their bonds and mortgages and the income therefrom—are exempt from State, municipal or local taxation except with the permission of Congress. So far from granting this permission, Congress has expressly denied it, and, furthermore, has declared that these mortgages and bonds are to be deemed and held to be "instrumentalities of the Government." It is not here contended that Congress can arbitrarily and conclusively, by a mere fiat, transmute a private into a governmental instrumentality. But when it makes an express declaration that a given instrumentality is to be deemed and held to be a governmental one, that declaration may not properly be disregarded if there is any rational ground whatever for, that is, any possible view in reason which will support, such a declaration. In fine, the declared opinion of the legislature as to this is almost, if not absolutely, conclusive upon the other departments of Government.

W. W. WILLOUGHBY,
Of Counsel for Appellee, Federal Land Bank of Wichita, Kansas.

Appellee.

Farm Loan Case.

IN THE

Supreme Court of the United States

October Term, 1920.

CHARLES E. SMITH,
Appellant,
against
KANSAS CITY TITLE AND TRUST COMPANY, *et al.,*
Appellees.

No. 199

BRIEF ON BEHALF OF FIRST JOINT STOCK LAND BANK OF CHICAGO, INTERVENOR-APPELLEE.

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BRIEF ON BEHALF OF FIRST JOINT STOCK LAND BANK OF CHICAGO, INTERVENOR-APPELLEE.

Statement.

Appeal from a final decree of the District Court of the United States for the Western Division of the Western District of Missouri, dismissing a bill of complaint for want of equity (Record, p. 30).

This appeal involves the constitutionality of the Federal Farm Loan Act, approved July 17, 1916 (39 Stats., p. 360), as amended by an act approved January 18, 1918 (40 Stats., p. 431), and particularly of Sections 26 and 27 of said Act (39 Stats., p. 380),[1] in so far as it authorizes the organization of two classes of banks, viz.: Federal Land Banks and Joint Stock Land Banks, the issuance of bonds by them, and the exemption of said bonds from taxation.

[1]Also as further amended by Act approved April 20, 1920, Public No. 182 (affecting Sec. 3, ¶7, Sec. 10, ¶1, Sec. 11, ¶3, Sec. 12, ¶3, Sec. 20, ¶3), and by Act approved May 29, 1920, Public No. 232 (amending Sec. 16).

The case involves the validity of $17,502,667.50 of stock and $152,495,000 of bonds, issued by the Federal Land Banks, and $83,527,000 of stock and $60,089,000 of bonds issued by Joint Stock Land Banks, all outstanding in the hands of the public, as well as of $6,832,680 of stock and $175,000,000 of bonds issued by Federal Land Banks and held in the United States Treasury.

The bill of complaint (Record, pp. 1-18) was filed by plaintiff, a stockholder in the Kansas City Title and Trust Company, a trust company organized under the laws of Missouri, to enjoin it from purchasing for investment pursuant to resolution of its Board of Directors, certain Federal Land Bank bonds and Joint Stock Land Bank bonds, upon the ground that the said bonds and the tax exemption features thereof were invalid, unlawful and unconstitutional. By proper proceedings, the Federal Land Bank of Wichita, Kansas, was permitted to intervene on behalf of itself and all other Federal Land Banks (Rec., p. 20), the First Joint Stock Land Bank of Chicago, Illinois, was permitted to intervene in behalf of itself and all of the other Joint Stock Land Banks (Rec., p. 19); and the United States was heard as *amicus curiae* (Rec., p. 34). By consent of all parties the bill was amended by interlineations, which amendatory matter, it was agreed, should at all times and under all circumstances be treated as if in the original bill as and when filed (Rec., p. 31). The defendant Trust Company moved to dismiss the bill for want of equity (Rec., p. 21). The United States and each of said intervenors, to speed an early disposition of the cause, adopted as their own and were heard upon the defendant's motion to dismiss (Rec., p. 31). After two days' argument before VAN VALKENBERG, *J.*, the motion was granted and a final decree was entered, from which plaintiff was allowed to appeal (p. 31). The case was advanced in this Court and was argued

orally at the bar and submitted on January 6, 7 and 8, 1920.

On April 26, 1920, the Court ordered the cause restored to the docket for reargument, and subsequently set it down for hearing on October 11, 1920.

Case Made by the Bill of Complaint.

The bill shows that since the passage of the Farm Loan Act, the United States has been divided, pursuant to its provisions, into twelve Land Bank Districts, in each of which one Federal Land Bank has been organized, and that up to July 1, 1919, these twelve banks have issued capital stock to the aggregate amount of $8,892,130, of which, stock to the amount of $8,265,809 is held by the Treasury Department of the United States; that up to September 30, 1919, said Federal Land Banks have issued Farm Loan bonds to the amount of $285,600,000, of which about $135,000,000 have been purchased and are held in the Treasury of the United States; that up to September 30, 1919, twenty-seven Joint Stock Land Banks had been incorporated under the Act, with an aggregate capital of $8,000,000, all of which had been subscribed and $7,450,000 paid in, and that said Joint Stock Land Banks have issued, under the provisions of the Act, Farm Loan bonds to the aggregate amount of $41,000,000, which are now outstanding in the hands of the public (Rec., pp. 9-10).[2]

The bill further shows that the Federal Land Banks on September 30, 1919, were the owners of United States bonds to the par value of $4,230,805 and that the Joint Stock Land Banks, on August 31, 1919, were the owners of United States bonds to the par value of $3,287,503 (Rec., p. 9): that pursuant to the provisions of Sec. 32 of the

[2]As shown by Exhibits C and D of the Appendix (pp. 112, 113) these amounts have been varied since the bill was filed. The present figures are given accurately on page 2 (*supra*).

Federal Farm Loan Act, as amended in 1918, the Secretary of the Treasury made certain deposits for the temporary use of the Federal Land Banks, out of moneys in the Treasury, a statement whereof is set forth on page 8 of the Record, for which said banks issued their respective certificates of indebtedness bearing 2 per cent. interest per annum (Rec., p. 8).

That during the summer of 1918, the Federal Land Banks of Wichita, St. Paul and Spokane, respectively, were designated as financial agents of the Government for the making of seed grain loans to farmers in drought stricken sections, the President having set aside $5,000,000 for that purpose out of his $100,000,000 war fund. That the three banks mentioned had made upwards of 15,000 loans of said character, aggregating upwards of $4,500,000, all of which were secured by crop liens and that the said banks were now engaged in collecting said loans. That the said banks acted in the matter without compensation. That up to the time of filing the bill of complaint, the Secretary of the Treasury had not designated any of the Federal Land Banks, or Joint Stock Land Banks as depositaries of public moneys, nor, except as above stated, had they or any of them performed any duties as depositaries of public money or as financial agents of the Government (Rec., p. 10). Averring that the officers of the Trust Company proposed to ıy with its moneys Farm Loan Bonds issued by each c..ss of the Land Banks above described "solely because of its belief in (a) the validity of said bonds, and especially (b) in the exemption thereof from all forms of taxation"; that the acts of Congress under which said bonds were issued were unconstitutional and that said bonds, if purchased, would be subject to taxation, despite the exemption in the act of Congress, plaintiff as a stockholder of the Trust Company brought this suit to restrain the alleged unlawful application of its funds (Rec., pp. 15-17).

The Court (VAN VALKENBERG, *J.*), at the close of the arguments, delivered an oral opinion (Rec., pp. 22-30) in which he sustained the Constitutionality of the Act in all respects, as to both classes of Land Banks, and therefore ordered that the bill be dismissed for want of equity.

The Federal Farm Loan Act.

The Federal Farm Loan Act was approved by the President July 17, 1916. It is entitled:

> "An act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create government depositaries and financial agents for the United States, and for other purposes."

A summary of its provisions is annexed to this brief as a part of the Appendix, marked A.

Purpose of the Act.

The title of the Act clearly indicates its purpose. The first object expressed is *"to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage."* The great need for this, the vital importance to the nation of its accomplishment, and the inadequacy of the machinery and resources of the national banks and the Federal Reserve Banks to supply this want without crippling them in their primary function of providing the credits required in the commercial and industrial business of the nation, and the intimate relation of this problem to the fiscal requirements of the Government, hardly need exposition, but will be indicated in the following portions of this brief.

The next object stated is,

> *"to equalize rates of interest based upon farm loans,"*

or, it might be more accurately expressed, to relieve the requirements of agricultural credit from the burden of existing extortionate rates of interest and the exactions of loan brokers, thus eliminating usurious payments on loans—one of the ends Hamilton sought to accomplish in the establishment of the First Bank of the United States, to the great improvement of public credit.

The chief purpose of the Federal Reserve Act was as stated by the Committee in reporting it to the U. S. Senate,

> "to give stability to the commerce and industry of the United States, prevent financial panics or financial stringencies, make available effective commercial credit for individuals engaged in manufacturing, in commerce, in finance, and in business to the extent of their just deserts * * *" (S. Rep., No. 133, Part I, 63rd Cong., 1st Sess.).

No one questions that these purposes are within the powers of Congress to accomplish. Can it be any the less within its power to give stability to commerce and industry by making effective commercial credit for individuals engaged in *agriculture;* to prevent financial stringency by protecting those engaged in that vast industry from extortionate rates of interest, and terms of credit which require repayments of loans on conditions which mature the principal of large amounts at one time, when money may be scarce and interest rates high?

The next, is

> *"to furnish a market for United States bonds, to create Government depositaries and financial agents of the United States."*

These are purposes obviously within the borrowing powers of Congress.

And finally,

for other purposes."

All these as will appear from a perusal of the Act, are germane to the particular purposes expressed in the title.

To effectuate them, Congress erects a bureau in the Treasury Department of the United States, clothed with power to carry out the provisions of the Act.

It then provides for two methods of providing the credit required in aid of agricultural development; (1) a co-operative system of borrowers' associations operating through Farm Loan Banks, for which banks the Government, in the first instance, is to furnish the necessary capital, to be gradually withdrawn and replaced by private investment, and (2) Joint Stock Land Banks, organized on the model of the National Banks, whose capital is to be furnished entirely by private subscription.

Both of these classes of institutions operate under the direct supervision and control of the Government, acting by the Farm Loan Board. The Act looks to their acquisition of Government bonds as a necessary result of their operations, and avails of their machinery for certain other purposes useful in the conduct of the fiscal operations of the United States.

In order to ensure the success of the purposes of the Act, both classes of banks, the bonds issued by them and the farm mortgages in which they are to deal, are exempted from State and Federal taxation, although the capital stock of the Joint Stock Land Banks is made subject to State taxation, in the same manner and with the same limitations as shares in National Banks.

No Opposition to This System Has Come from Any State.

On the contrary, wherever a State has acted respecting the Federal Farm Loan System, it has been to express approval and give co-operation to it.

Thus, many states by express legislation have made Farm Loan Bonds lawful investments for public and trust funds.

See laws of

Alabama,	Chap. 346	Laws	of	1919	
California,	Chap. 180	"	"	1919	
Florida,	Chap. 7391	"	"	1917	
Georgia,	Page 160	"	"	1918	
Idaho,	Chap. 10	"	"	1917	(limited)
Massachusetts,	Chap. 67	"	"	1918	"
Maine,	Chap. 45	"	"	1917	
Minnesota,	Chap. 88	"	"	1917	(limited)
Nebraska,	Chap. 190, (p. 720)	"	"	1919	
New Jersey,	Chap. 36	"	"	1917	(limited)
No. Carolina,	Chap. 83	"	"	1919	
Ohio.	Page 147	"	"	1917	
Texas,	Chap. 63	"	"	1917	
Vermont,	Chap. 136	"	"	1919	(*semble*)
Wisconsin,	Chap. 630	"	"	"	
Wyoming,	Chap. 58	"	"	"	

Some states have expressly exempted either farm loan investments, or specifically, Federal Farm Loan Bonds "issued under the provisions of the Federal Farm Loan Act of July 17, 1916," from taxation, income or other State taxes. This specific exemption appears in the New York Income Tax Law of 1919 (Tax law Sec. 359) and the Alabama Income Tax law of 1919 (Chap. 328) also North Dakota (Chap. 224 of Laws of 1919) New Mexico (Chap. 123 of laws of 1919) *semble.*

This legislation is especially important because it thus

clearly appears that, so far from the states objecting to the Farm Loan System and the Farm Loan Bonds as an invasion of states' rights, to the extent that they have acted, they have recognized the benefit of the system and are attempting to help it. These statutes are also important in that they indicate that in certain states the point as to the validity of the exemption of the Farm Loan Bonds from state taxes already has been settled against the plaintiff in this cause by an authority that he cannot consistently question, *i. e.*, the state itself.

Practical Effect of Appellant's Contention.

This suit directly challenges the validity of hundreds of millions of dollars in securities which have been issued under the direction of the Treasury Department of the United States, in exact conformity with the requirements of an Act of Congress. Every one of the bonds bears the representation that it has been so issued and that such security *"and the income derived therefrom shall be exempt from Federal, State, Municipal and Local Taxation,"* and these securities were purchased by the investing public in reliance upon such representation.

We do not know of any case which ever has come before this Court directly involving the possible destruction of such great values.

The bill strikes at the very root of the whole Farm Loan system. It not only questions the validity of the tax exemptions, but the enforcibility of the bonds themselves. It is true that during the oral argument at the last term, counsel for Appellant, probably horrified at the possible consequences of his contention, stated that he only sought to have the tax exemption declared illegal. But his printed argument seeks to involve this entire volume of investment in which the public has put so great a part of its savings,

in one sweeping taint of illegality. The brunt of the attack is directed against the Joint Stock Land Banks, for the loan sharks and rural credit concerns which for so long a time have been fleecing the farmers read their doom in the success of these institutions; but the printed argument of Appellant strikes as well at the Federal Land Banks, in which the United States is but a temporary stockholder, and whose constitutionality depends upon exactly the same basis as that of the Joint Stock Banks.

POINT I.

The Joint Stock Land Banks, represented by the First Joint Stock Land Bank of Chicago, intervenor in the Court below, unite with the appellant in urging the consideration and decision of this case on the merits. They concur in the argument made by appellant that these proceedings are such that the validity of the law can and should be decided by this Court.

It is significant that the challenge to the constitutionality of the Farm Loan Act, and especially to the validity of the exemption of Farm Loan Bonds from taxation, comes *not from any public authority.* No state, no political subdivision of a state, no national authority is here objecting to the exercise by Congress of the power of creating and protecting this new system of financial agencies. The attack comes ostensibly from a stockholder of a Kansas City trust company, fearful of the possible loss of money proposed to be invested in Farm Loan Bonds! Obviously, the actual attack comes from some much more interested source. The farm mortgage brokers and the insurance and financial companies who have

been reaping unconscionable profits from the business of lending to farmers, naturally are concerned to prevent, if they can, the success of these new agents. But notwithstanding the source, the banks in the system could not suffer the attack to go undefended. Credit is highly sensitive, and once a suit was brought seriously questioning the validity of the Act, the banks deemed it necessary to intervene and to defend.

The court will readily understand that the pendency of this suit, with the cloud upon the validity of the securities which the postponement of its decision by this Court has involved, interposes a very serious obstacle to the successful functioning of the Farm Loan system. Not only is a cloud cast upon the marketability of the great volume of securities which already has been issued, but naturally, nobody is anxious to purchase new securities whose validity is under challenge in the court.

For this reason, we respectfully urge the Court to consider on the merits and definitely determine the validity of the securities involved and their exemption from taxation. The propriety of the procedure adopted would seem to be settled in *Bruskaber* v. *Union Pacific Railroad Co.*, 240 U. S., 1.

POINT II.

There is no essential difference between the Federal Land Banks and the Joint Stock Land Banks so far as Congressional authority for their creation is concerned.

It is true that the initial capital of the Federal Land Banks was furnished by the government, but this is rapidly being taken up by private parties. It is also true that the government has purchased and holds a certain amount of Farm Loan Bonds issued by the Federal Land

Banks. This, too, is a temporary circumstance. While the capital of Joint Stock Land Banks is furnished by private subscription, and the bonds issued by them may not be purchased directly by the government, these bonds are made lawful investments for all fiduciary and trust funds, may be accepted as security for all public deposits; any member bank of the Federal Reserve System may buy and sell Farm Loan Bonds issued by both classes of banks, and any Federal Reserve Bank may buy and sell Farm Loan Bonds issued by both classes of banks to the same extent and subject to the same limitations placed upon the purchase and sale by State banks of State, County, District or Municipal bonds under the Federal Reserve Act. (See Sec. 27.) The Joint Stock Land Banks are subject in their operations to close supervision and control by the United States Treasury Department, acting through the Federal Farm Loan Board. Indeed, there is scarcely a detail of supervisory power vested in that Board over the Federal Land Banks which is not equally applicable to the Joint Stock Land Banks.

The differences between the statutory provisions applicable to the two classes of banks are, in matters of detail, not of fundamental principle.

(1) Thus while the Federal Land Banks may issue Farm Loan Bonds to an amount of twenty times their capital and surplus, the Joint Stock Land Banks are limited to an amount not exceeding fifteen times their capital and surplus. All Federal Land Banks are jointly and severally liable for the payment of all bonds issued by any one of said banks. No Joint Stock Land Bank is liable for the bonds of any other such bank, but, on the other hand, its stockholders are liable for the debts of the bank to an amount equal to their capital.

(2) Loans made by Joint Stock Land Banks are not restricted to the purposes specified in paragraph fourth

of Section 12 of the Act. On the other hand, alike with loans made by Federal Land Banks, they must be secured by first mortgage on farm lands, although these lands must be located within the State in which the bank has its principal office, or within some one State contiguous thereto. The loan may not exceed fifty per cent. of the value of the mortgaged land and twenty per cent. of the insurable improvements, as ascertained by the appraisers of the Farm Loan Board. These banks are not subject to the limitations of paragraph sixth of Section 12, that the loan can only be made to a person actually or shortly to become engaged in the cultivation of the farm mortgaged, nor to the limitation that the amount of loans to any one borrower shall in no case exceed a maximum of $10,000, nor need a borrower in such cases be required to enter into an agreement that the whole or any portion of his loan shall not be expended for purposes other than those specified in his original application. But on the other hand, like the Federal Land Banks, the Joint Stock Land Banks cannot charge interest on loans made on mortgage by them at a rate exceeding six per cent. per annum, exclusive of amortization payments, nor can they charge interest at a rate more than one per cent. greater than the interest on the last series of Farm Loan Bonds issued by them, and they are forbidden in any case to demand or receive under any form or pretense any commission or charge not specifically authorized by the Act. They are subject to the same requirements as the Federal Land Banks, that before any mortgage loan is made by them, the application for the loan, together with a written report, signed by its Loan Committee, must be submitted to the Farm Loan Board, and referred to appraisers appointed by it. No loan may be made except on the favorable report of such appraisers. The Federal Farm Loan Board is given power to grant or refuse alike to Joint

Stock Land Banks and Federal Land Banks *authority to make any specific issue of Farm Loan Bonds* (Sec. 17c). The collateral security for bonds issued must be deposited with the Farm Loan Registrar of the district, on applying for approval of the issue, and no issue of Farm Loan Bonds shall be authorized, whether made by Joint Stock Land Banks or Federal Land Banks, unless the Federal Farm Loan Board shall approve such issue in writing (Sec. 18). The security for the issue is retained by the Farm Loan Registrar, as Trustee. *The bonds to be issued are prepared for delivery to both Land Banks and the Joint Stock Land Banks, by the Secretary of the Treasury* (Sec. 20) *in a form prescribed by him.* The investment of the amortization payments made from time to time by borrowers is carefully regulated by Section 22 of the statute, the only differences between the two banks in this regard being that Federal Land Banks *may not* invest in Farm Loan Bonds issued by Joint Stock Land Banks, while Joint Stock Land Banks *may* invest in Farm Loan Bonds issued by Federal Land Banks, and that Federal Land Banks may loan their moneys on first mortgages on farm lands within the Land Bank District, whereas Joint Stock Land Banks are limited to loans upon lands within the State where located, or a State contiguous thereto.

But one other difference need be noted, namely, that the Federal Land Banks are authorized to accept deposits of current funds payable upon demand from their own stockholders (Sec. 14), whereas Joint Stock Land Banks are prohibited from receiving deposits not expressly authorized by the provisions of the Act (Sec. 16), and may not, therefore, be allowed to accept deposits even from their own stockholders. But both Joint Stock Land Banks and Federal Land Banks alike may act as depositaries of public money when so designated by the Secretary of the Treasury, in accordance with Section 6 of the Act.

It will, therefore be seen, that the Joint Stock Land Banks must make the expenses of their operation and all profits out of a margin of one per cent. between interest received from mortgages to them of farm lands and interest paid by them upon Farm Loan Bonds issued. Even with this slender margin of profit, the experience of four years' operation has shown that the business can be conducted with substantial profit. It may, therefore, readily be imagined what enormous profit has been enjoyed by the mortgage bankers, life insurance companies and other financial concerns which have been lending to farmers, not only at high rates of interest, but charging them with extortionate commissions for procuring the loans.

Unsuccessful Effort to Induce Congress to Destroy Joint Stock Land Banks.

It is this class of organizations from which the farmers have so long suffered, who, seeing an end put to their extravagant and unconscionable profits, have banded together to destroy, if possible, the competition which threatens their continuance. These are the people who are back of the present attack upon the law and upon these banks, and these are they who, at the last session of Congress, introduced and actually procured a favorable report from the Senate Committee on Banking and Currency, upon a bill to take from the Joint Stock Land Banks the protection of the exemption from taxation upon the mortgages made to and Farm Loan bonds issued by it. This bill (66th Congress, 2nd Session, Senate 3109) was acted upon by the Committee on December 8, 1919, and placed upon the calendar *without the formality of a hearing*. At the urgent request of the Joint Stock Land Banks, the bill was recommitted to the Committee and a hearing granted and held before the Committee on January 10, 12 and 13, 1920. (See report printed for use

of Committee.) After that hearing, at which the character of the opposition was exposed, and the actual workings of the system demonstrated, nothing further was heard of the bill. The principal support to the bill before the Committee came from the "Farm Mortgage Bankers Association of America," in whose name there was filed and is printed with the report an elaborate argument against the bill, to which, however, it may be observed, no individual seemed willing to put his name, the opposition being developed under this anonymity. We take the liberty of quoting in the Appendix (pp. 114-117) from the statement made by Mr. W. W. Powell, Secretary of the American Association of Joint Stock Land Banks, before the Committee, which gives succinctly the facts regarding the operation of these banks and the reasons which justify their creation as government instrumentalities.

POINT III.

The burden is upon Appellant to establish the unconstitutionality of the Farm Loan Act beyond a reasonable doubt.

Many years ago, the rule to govern courts in passing upon a challenge to the constitutionality of an act of Congress, was laid down in this language:

> "It must be remembered that, for weighty reasons, it has been assumed as a principle in construing constitutions, by the Supreme Court of the United States, by this Court, and by every other court of reputation in the United States, that an act of the Legislature is not to be declared void unless the violation of the constitution is so manifest as to leave no room for reasonable doubt."
>
> *Commonwealth* v. *Smith*, 4 Binney, 123.

In *Fletcher* v. *Peck*, 6 Cranch 87, Chief Justice MARSHALL said:

> "It is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers and its acts to be considered void. The opposition between the Constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other."

These citations were quoted in the *Legal Tender Cases*, 12 Wall., 457, at p. 531, by Mr. Justice STRONG, who added:

> "It is incumbent, therefore, upon those who affirm the unconstitutionality of an act of Congress to show clearly that it is in violation of the provisions of the Constitution. It is not sufficient for them that they succeed in raising a doubt."

Tested by this rule, we submit the Appellant in this case must fail.

POINT IV.

Appellant's attack on the constitutionality of the Farm Loan Act is based upon the erroneous hypothesis that the banks provided for in it are *private* institutions established for a *private* purpose. This fallacy runs throughout his argument.

The major premise of appellant's argument is that the purpose of the Act was to provide agencies which were not in the main to perform essential and necessary governmental functions, but which, in effect, were to perform private functions, loaning on mortgage and issuing bonds to private investors, wholly as the instruments of private business. Again and again, this insistence is

made. The fact that *one* of the great purposes of the act was to enable farmers to secure loans upon their lands at reasonable rates of interest, is seized upon as a support for the argument that the *whole* purpose of the Act was private and not public. The conclusive answer to this contention is furnished by the observation of Chief Justice MARSHALL in the *Osborn* case:

> "The foundation of the argument in favor of the right of the State to tax the Bank is laid in the supposed character of that institution. The argument supposes the corporation to have been originated for the management of an individual concern to be founded upon a contract between individuals having private trade and private profit for its great end and principal object. • • • But the premises are not true. The Bank is not considered as a private corporation whose principal object is individual trade and individual profit; but as a public corporation created for public and national purposes."

The whole crux of the case lies just there. If the great public purpose which Congress had in view in establishing this Farm Loan System and authorizing the creation of the different classes of banks as instrumentalities for carrying it out, is to be ignored, and the matter viewed purely as a means of authorizing the creation of private business instrumentalities for a private purpose, then, of course, the authority which Congress assumed to exercise cannot be sustained. On the other hand, if the entire current of decision from that which sustained the First Bank of the United States down to the present time, through all the widening development of fiscal institutions to serve the great public purposes of the Government, has the significance which we conceive it to have, these banks must be sustained either by a parity of reasoning with that which this Court adopted in upholding the creation of the National Banking System and

its extension to the Federal Reserve Act, or as a method adopted by Congress as an alternative to the direct appropriation of moneys for the public welfare.

The functions performed by these banks are no more private than those of the ordinary commercial banks of the National Banking System. They are part of the exercise of great instruments affecting public credit, designed to make more efficient the fiscal operations of the National Government, to develop the national wealth and to furnish that particular basis of credit upon which the successful operations of the State must depend.

The cases cited by appellant in support of his contention that the Land Banks are not "*banks*" within the meaning of that term, depend entirely upon the construction of particular statutes. Whether or not a given institution is a trust company, or a bank, within the meaning of a particular law applicable to one or the other, is wholly beside the mark, in the consideration of the question whether or not a given institution is a proper instrumentality for carrying out the fiscal purposes of the United States Government. Would the appellants contend that Congress could not authorize a modification of the National Banking Act, by providing in it for the establishment of financial institutions primarily exercising the powers usually conferred upon trust companies, and having, as do trust companies, all of the powers of banks, except that of issuing bills to circulate as money? We lay no stress upon the point whether or not the Federal Land Banks are *banks* within the ordinary sense of that term. We have pointed out the history of the growth and development of banks in the United States, showing that from the earliest times, the furnishing of credit based upon land was considered as a part of the banking business. But we are now contending only that the corporations

authorized by the Farm Loan Act are appropriate instrumentalities for the purpose of carrying out the fiscal business of the United States; that their operations necessarily have such direct relation to the fiscal operations of the National Government, that they are appropriate agencies for Congress to create for the purpose of carrying out its financial affairs. The argument of appellant is that the great business of loaning upon farm mortgages and issuing bonds secured by the pledge of these mortgages is not a governmental business, and that the receipt of government deposits and the rendering of services as disbursing agent of government moneys, constitute but a slight and not essential part of their business, and that the cases of *South Carolina* v. *United States,* 199 U. S., 437, and *First National Bank* v. *Union Trust Co.,* 244 U. S., 416, and other cases cited by appellant, drawing a distinction between the exercise of strictly governmental powers and the carrying on by Government of ordinary private business, therefore govern. We meet this by pointing out that the Farm Loan Act establishes a great governmental system for improving the public credit and facilitating the fiscal operations of the government.

The appellant's attempt to establish a difference between the contentions made in the brief of counsel representing the Federal Land Banks and those of counsel representing the Joint Stock Land Banks, will be disposed of by a glance at the briefs filed on behalf of them, respectively. There is no such difference between the contentions made by them as the appellant seeks to establish. Both of them maintain that Congress had authority to create these banks as instrumentalities of the government, empowered to issue Farm Loan Bonds for the purposes described (Hughes, Brief, Point III; Wickersham and McAdoo, Brief, Point V). Judge Hughes perhaps lays the greater stress upon the argu-

ment that Congress, having authority to provide for the investment of public moneys and the making of loans for the purpose of encouraging agricultural development throughout the country, might provide for such borrowing through the issuance of Farm Loan Bonds for the same purpose. These appellees also assert that the general purposes of the Farm Loan Act might have been obtained by Congress through the direct exercise of the powers of taxation and borrowing, and that, having this power, Congress may accomplish the same ends through corporate instrumentalities adapted to, or created for, the purposes. They further urge that the Farm Loan Banks of both classes are banking instrumentalities, lawfully created by Congress for the purpose of facilitating the fiscal operations of the government; that the operations of these banks have an important influence upon public credit; that the Land Banks of both classes are useful and essential instruments in the prosecution of the fiscal operations of the government, and therefore, within the constitutional powers of Congress to regulate and equip with the powers conferred upon them.

The appellant devoted a page or more of his original brief in this Court to an *ad captandum* effort to discredit the Farm Loan Act by the assertion that it was based

> "upon the German plan of collective and co-operative borrowing of money on long-time farm mortgages. The words 'German plan' are used advisedly. Such plan was first adopted in Prussia. It found its principal development in Germany."

Again, he said:

> "It is quite significant that the plan is German, as the real question here is whether there has been enacted a law inimical to the spirit of our institutions and contrary to the provisions of our Constitution."

"Merely because the system is German," he says,

"does not *necessarily* imply that it is illegal" (Brief, pp. 6, 8). A striking admission!

Apparently he regards this contention as having persuasive value in this Court, for he repeats and amplifies it in his revised brief.

Without commenting upon the taste displayed in submitting and reiterating suggestions of such nature to this Court, nor of the Appellant's appreciation of the weakness of his objections to the constitutionality of the Act, exhibited by the attempt to buttress arguments by such an appeal to national prejudice, the *fact* is, that in favorably reporting the bill to the House of Representatives on May 3, 1916, the Committee on Banking and Currency stated that

> "Whatever its obligations to successful foreign systems," the bill "*provides for a distinctively American system of rural credits* and endeavors to embody, and it is confidently believed, does embody, the best thought which the thorough discussion of the past years has developed with reference to rural-credits legislation."

And again, that

> "Your Committee has endeavored to draft a bill which when enacted into law shall provide an *American* system dedicated to the peculiar needs of the *American* farmer and so organized as to give service as efficiently as any system of rural credits in any other country in the world."
>
> [64th Cong., 1st Session, Report No. 630 on Rural Credits. To accompany H. R. 15004.]

Such considerations, however, are wholly irrelevant to the only question before this Court, namely, whether or not the Congress in any respect exceeded its constitutional powers in the enactment of the legislation upon which depends the validity of the bonds questioned in the suit.

POINT V.

The Farm Loan Banks of both classes are banking instrumentalities lawfully created by Congress for a *public* purpose, namely, that of facilitating the fiscal operations of the Government. They are designed to relieve the National Banks from the demands of long-time agricultural credits. The operations of the banks have an influence upon public credit scarcely less important to the fiscal operations of the Government than that which led to the creation of the United States banks and the National banks.

The Farm Loan Banks constitute the final step in the development of a series of banking institutions organized pursuant to acts of Congress for the purpose of regulating and controlling the entire field of public credit in so far as it may affect the fiscal operations of the United States Government.

What Is a Bank?

The current idea of a bank is based upon the ordinary bank of deposit and discount.

Professor Morse says:

> "A bank is not only a bank of discount and issue. Historically, receiving special deposits is the root of banking, but it is now of little importance compared with the great tree that looms against the Sky of Nineteenth Century Civilization."
>
> Morse on Banks, Sec. 2.

Sir John R. Paget, writing for the Encyclopædia Brittanica (11th ed., Tit. Bank), says:

> "The word *'bank'* in an economic sense covers various meanings which all express one object, a contribution of money for a common purpose. • • • Originally connected with the idea of mound or bank of earth—hence with that of a *monte*, an Italian word describing a heap—the term has been gradually applied to several classes of institutions, established for the general purpose of dealing with money."

The essential conception of a bank implies the combination of moneys as a joint fund for the purpose of lending to others upon adequate security for its repayment.

> See Morse on Banks, 5th ed., Secs. 2-4;
> Theory and History of Banking, Chas. F. Dunbar, pp. 2-9.

The receipt of money from stockholders or the purchasers of its bonds, the lending of money upon the security of farm mortgages and the facilities of credit provided by the issue and sale of bonds secured by an aggregation of mortgages—which is the primary business of both classes of the land banks, Federal and Joint Stock, constitute banking in the technical sense of the term. In the great development of commercial banks and banks of currency issue, the fact that land originally was regarded as the soundest basis for banking credit has been lost sight of.

Land as a Basis of Banking Credit.

The first report made by Hamilton, as Secretary of the Treasury, on the public credit, January 9, 1790, was pursuant to a resolution of the House of Representatives which declared

> "that an adequate provision for the support of the public credit is a matter of high importance to the honor and prosperity of the United States" (2, Hamilton's Works, Lodge's Edition, p. 47).

In the second and fuller report which he made to the Senate January 20, 1795, he referred to the passage of the Act of February 25, 1791, incorporating the first Bank of the United States, and dwelt upon the great consequence to every country of credit, public and private. Public credit, he said, had been well defined to be

> "a faculty to borrow at pleasure considerable sums on moderate terms; the art of distributing over a succession of years the ordinary efforts found indispensable in one; a means of accelerating the prompt employment of all the abilities of a nation, and even of disposing of a part of the overplus of others" (3 Hamilton's Works, pp. 37-9).

Function of a Bank in Maintaining Public Credit.

The part a bank plays in maintaining credit is described by Prof. Sumner with great lucidity in his History of Banking, Vol. I, pp. 28-30, as follows:

> "A bank intervenes between lenders and borrowers and itself performs both operations. It gathers up capital from the lenders and distributes it to borrowers. Then it collects it again from the borrowers and returns it to the lenders. The pulsations of this movement are the life phenomena of the bank." * * *

> "A very large class of credit operations, however, consists in what we might call suspended exchanges. Half the exchange operation is performed, but the other half is delayed under a promise or contract of later delivery. A bank steps between. It fulfils the contract at once and does the waiting. If no defalcation occurs, all the givings and takings will be equal, plus a commission for waiting."

It is the performance of this function of bridging over the interval between the time of the borrower's need and the period of his ability to repay, which is the great mission of a bank. The greater the certainty of meeting the legitimate requirement of borrowers and the guaranty of repayment and the more reasonable the conditions of this guaranty, the greater will be the stability of national fiscal conditions.

"Among the circumstances which recommend credit and indicate its importance in the whole system of internal exertion and amelioration," Hamilton pointed out in his Second Report, "it is impossible to pass unnoticed its unquestionable tendency to moderate the rate of interest—a circumstance of infinite value in all the operations of labor and industry."

"Public and private credit," he declared, "are closely allied, if not inseparable" (3 Hamilton, pp. 36-39).

In an earlier communication to Robert Morris, dated April 30, 1781, Hamilton had argued that to surmount existing obstacles to a satisfactory financing of the Government's requirements, and

> "give individuals ability and inclination to lend in any proportion to the wants of the Government, a plan must be devised which by incorporating their means together and uniting them with those of the public will on the foundation of that incorporation and union erect a mass of credit that will supply the defect of money capital and answer all the purposes of cash." • • •

In his plan for the establishment of a bank contained in this communication, he proposed to demand landed security as a part of the bank's stock (3 Hamilton, pp. 99, 106).

To the House of Representatives, on December 13, 1790, he wrote:

> "that, from a conviction (as suggested in his report herewith presented) that the national bank is an institution of primary importance to the prosperous administration of the finances and would be of the greatest utility in the operations connected with the support of the public credit, his attention has been drawn to devising a plan of such an institution upon a scale which will entitle it to the confidence, and be likely to render it equal to the exigencies of the public" (3 Hamilton, p. 125).

He argued that one of the results of the establishment of a bank would be to abridge rather than to promote usury (*Id.*, pp. 135, 137).

After outlining the form of the proposed organization and the objects sought to be accomplished by the bank, he said:

> "Another wish dictated by the particular situation of the country is that the bank could be so constituted as to be made an immediate instrument of loans to the proprietors of lands; but this wish also yields to the difficulty of accomplishing it. Land is alone an unfit fund for a bank circulation" (*Id.*, pp. 161-162).

The First and Second United States Banks.

The Act of Congress creating the First Bank of the United States, approved February 25, 1791 (1 Stats., 191), recited:

> "Whereas, it is conceived that the establishment of a bank for the United States upon a

> foundation sufficiently extensive to answer the pur poses intended thereby, and at the same time upon principles which afford adequate security for an upright and prudent administration thereof would be very conducive to the successful conducting of the national finances; would tend to give facility for the obtaining of loans for the use of the government in sudden emergencies; and would be productive of considerable advantages to trade and industry in general,"

therefore, it was enacted that the bank be established, with a capital stock of ten million dollars, one-fifth of which might be furnished by the Government, and subscriptions to the remainder of the capital by private parties might, to the extent of three-fourths thereof, be paid in bonds of the United States (Secs. 11, 2).

The bank was prohibited from loaning to the Government an amount exceeding $100,000 (1 Stats. at Large, p. 196).

The history of this bank, the expiration of its charter in 1811 and the creation of the Second Bank of the United States in 1816, is well known. Holdsworth, writing of the First Bank, says its establishment was regarded as an essential and vital part of the general scheme for the support of public credit proposed by Hamilton—"an indispensable engine in the administration of the finances" (see "United States National Monetary Commission, First and Second Banks of the United States," by Holdsworth and Dewey, pp. 8-10).

The Act creating the Second Bank of the United States was passed April 10, 1816 (3 Stats., 266). The capital of the bank was fixed at thirty-five million dollars, seven millions of which was to be subscribed and paid for by the United States either in gold or silver coin, or in 5 per cent. stock of the United States. Subscriptions to the bank's capital, by others than the Government, were payable, one-third in gold or silver coin

and two-thirds in either coin or United States stock. The bank was forbidden to loan more than $500,000 at any time to the Government.

The constitutionality of this act was challenged in the case of *McCulloch* v. *Maryland* (4 Wheat., 316). The argument against the act followed substantially the lines of the appellant's argument in the present case. What natural connection, asked counsel,

> "is there between the collection of taxes and the incorporation of a company of bankers? Can it possibly be said that because Congress is vested with the power of raising and supporting armies that it may give a charter of monopoly to a trading corporation as a bounty for enlisting men? Or that under its more analogous power of regulating commerce it may establish an East or a West India Company with the exclusive privilege of trading with those parts of the world? Can it establish a corporation of farmers, or burthen the internal industry of the States with vexatious monopolies of their stable productions? There is an obvious distinction between those means which are incidental to the particular power, which follow as a corollary from it, and those which may be arbitrarily assumed as convenient to the execution of the power, or usurped under the pretext of necessity. For example: the power of coining money implies the power of establishing a mint. The power of laying and collecting taxes implies the power of regulating the mode of assessment and collection, and of appointing revenue officers; but it does not imply the power of establishing a great banking corporation, branching out into every district of the country, and inundating it with a flood of paper money" (4 Wheat., Mr. Jones, at p. 365).

Mr. Martin, for the State of Maryland, while not laying much stress on lack of power in Congress to erect the corporation, argued that the interest of the United

States in the bank was private property, and, though belonging to public persons, it was held by the Government as an undivided interest with private stockholders. It was employed in the same trade, subject to the same fluctuations of value, and liable to the same contingencies of profit and loss, and, therefore, it was subject to the taxing power of the States.

Stress was laid throughout the argument on behalf of the State upon the contention that the bank was a private enterprise, created for the private purpose of making money.

In reply, Mr. WEBSTER pointed out that:

> "A bank is a proper and suitable instrument to assist the operations of the government, in the collection and disbursement of the revenue; in the occasional anticipations of taxes and imposts; and in the regulation of the actual currency, as being a part of the trade and exchange between the States. It is not for this Court," he said, "to decide whether *a bank*, or *such a bank* as this, be the *best* possible means to aid these purposes of government. Such topics must be left to that discussion which belongs to them in the two houses of Congress. Here, the only question is, whether a bank, in its known and ordinary operations, is capable of being so connected with the finances and revenues of the government, as to be fairly within the discretion of Congress, when selecting means and instruments to execute its powers and perform its duties. A bank is not less the proper subject for the choice of Congress, nor the less constitutional, because it requires to be executed by granting a charter of incorporation. It is not, of itself, unconstitutional in Congress to create a corporation. Corporations are but means. They are not ends and objects of government. * * * Congress has duties to perform and powers to execute. It has a right to the means by which these duties can be properly and most usefully performed, and these powers executed. Among

> other means, it has established a bank; and before the act establishing it can be pronounced unconstitutional and void, it must be shown that a bank has no fair connection with the execution of any power or duty of the national government, and that its creation is consequently a manifest usurpation" (4 Wheat., pp. 325-326).

Attorney-General Wirt argued that the establishment of the bank

> "was necessary and proper to carry into execution several of the enumerated powers, such as, the power of levying and collecting taxes throughout this widely extended empire; of paying the public debts, both in the United States and in foreign countries; of borrowing money, at home and abroad; of regulating commerce with foreign nations, and among the several States; of raising and supporting armies and a navy; and of carrying on war."

To make the law constitutional, he argued, nothing more was necessary than that it should be fairly adapted to carry into effect some specific power given to Congress (*Id.*, pp. 352-356).

Mr. PINKNEY argued that the bank might be established as a part of the public administration without incorporation, but that Congress might, if it chose, create a corporation for the purpose. And he maintained,

> "the bank of the United States is as much an instrument of the government for fiscal purposes as the Courts are its instruments for judicial purposes" (*Id.*, pp. 389-396).

The arguments of Mr. Webster, Mr. Wirt and Mr. Pinkney were adopted *in toto* by the Court in Chief Justice MARSHALL'S historic opinion. This opinion conceded that among the enumerated powers of Government the words "bank" and "incorporation" were not

found, but it pointed out that the Constitution did confer upon the United States

> "the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation, are entrusted to its government."

Holding that a corporation might be employed by Congress with other means to carry into execution the powers of Government, no particular reason can be assigned, said the Chief Justice, for excluding the use of a bank, if required, for its fiscal purposes.

> "To use one, must be within the discretion of Congress, if it be an appropriate mode of executing the powers of government. That it is a convenient, a useful, and essential instrument in the prosecution of its fiscal operations, is not now a subject of controversy. All those who have been concerned in the administration of our finances, have concurred in representing its importance and necessity; * * * The time has passed away when it can be necessary to enter into any discussion in order to prove the importance of this instrument, as a means to effect the legitimate objects of the government."

But the Court made haste to add that

> "were its necessity less apparent, none can deny its being an appropriate measure; and if it is, the degree of its necessity, as has been very justly observed, is to be discussed in another place" (*Id.*, pp. 422-423).

In *Osborn* v. *Bank*, 9 Wheat., 738, where the constitutionality of the bank was again exhaustively reviewed, counsel for the appellant (the Ohio State Treasurer) con-

tended that banking in its nature is a private trade and business, in which individuals at all times may engage unless the municipal law forbid it; that if the individuals thus associated apply for and obtain from the legislative power of the country a special law creating them a corporation, they found their application upon some benefit to be derived to the public from conferring upon them the character they ask. This public benefit, he said,

> "may consist of the facilities afforded to the State, in the management of its fiscal concerns; or it may consist in the convenience to the community in the transaction of mercantile and other money affairs. It may arise from the payment of annual revenue, or a stipulated sum, into the public treasury. If the benefit to the public be considered a sufficient compensation for the faculty conferred, the corporation is created. But from this fact, in the language of this Court, 'nothing can be inferred which changes the character of the institution, or transfers to the government any new power over it. The character of civil institutions does not grow out of their incorporation, but out of the manner in which they are formed, and the objects for which they are created' (citing *Dartmouth College* v. *Woodward*, 4 Wheat., 638)."

He then argued that this corporation might be employed as an agent of the Government in connection with its fiscal concerns, but that the bank incorporated was not more a State instrument than a natural person performing the same business would be; that a bank whose stock is owned by private persons is a private corporation, although it is erected by the Government, and its objects and operations partake of a public nature. Therefore, he contended, the bank, being such a corporation, was not clothed with any of the political power of its creator, and was subject to the tax imposed upon its business by the State of Ohio (9 Wheat., pp. 766, 780).

Counsel for the bank (Mr. Webster, Mr. Clay and Mr. Sargent) argued that the constitutional power of Congress to create the bank

> "is derived altogether from the necessity of such an institution, for the fiscal purposes of the Union. It is established, not for the benefit of the stockholders, but for the benefit of the nation. It is part of the fiscal means of the nation. * * * The bank is created for the purpose of facilitating all the fiscal operations of the national government" (*Id.*, pp. 809-810).

The Court in the *Osborn* case reaffirmed the constitutionality of the bank, and its immunity from taxation by the States.

> "The foundation of the argument in favor of the right of a State to tax the bank," said Chief Justice MARSHALL, "is laid in the supposed character of that institution. The argument supposes the corporation to have been originated for the management of an individual concern, to be founded upon contract between individuals, having private trade and private profit for its great end and principal object.
>
> "If these premises were true, the conclusion drawn from them would be inevitable. This mere private corporation, engaged in its own business, with its own views, would certainly be subject to the taxing power of the State, as any individual would be; and the casual circumstance of its being employed by the government in the transaction of its fiscal affairs, would no more exempt its private business from the operation of that power, than it would exempt the private business of any individual employed in the same manner. But the premises are not true. The Bank is not considered as a private corporation, whose principal object is individual trade and individual profit; but as a public corporation, created for public and national purposes. * * * The whole opinion of the Court, in the case of *McCulloch* v. *The State*

> *of Maryland*, is founded on, and sustained by, the idea that the bank is an instrument which is 'necessary and proper for carrying into effect the powers vested in the government of the United States.' It is not an instrument which the government found ready made, and has supposed to be adapted to its purposes; but one which was created in the form in which it now appears, for national purposes only. It is, undoubtedly, capable of transacting private as well as public business. While it is the great instrument by which the fiscal operations of the government are effected, it is also trading with individuals for its own advantage" (*Id.*, p. 860).

The operations of the bank, the Court said, are believed to be essential to the performance of its services to the Government. The business of the bank constitutes its capacity to perform its functions as a machine for the money transactions of the Government. Its corporate character is merely an incident which enables it to transact that business more beneficially.

> "Were the Secretary of the Treasury to be authorized, by law, to appoint agencies throughout the Union, to perform the public functions of the bank, and to be endowed with its faculties, as a necessary auxiliary to those functions, the operations of those agents would be as exempt from the control of the States as the bank, and not more so. If, instead of the Secretary of the Treasury, a distinct office were to be created for the purpose, filled by a person who should receive, as a compensation for his time, labor and expense, the profits of the banking business, instead of other emoluments, to be drawn from the treasury, which banking business was essential to the operations of the government, would each State in the Union possess a right to control these operations? The question on which this right would depend must always be, are these faculties so essential to the fiscal operations of the government, as to author-

ize Congress to confer them? Let this be admitted, and the question, does the right to preserve them exist? must always be answered in the affirmative.

"Congress was of opinion that these faculties were necessary, to enable the Bank to perform the services which are exacted from it, and for which it was created. This was certainly a question proper for the consideration of the national legislature" (*Id.*, pp. 863-864).

Real Accomplishment, and Necessity, of United States Banks Were the Maintenance of Public Credit.

Now, what was it that the United States banks could do to facilitate the fiscal operations of the National Government which convinced Congress and the Supreme Court of their importance? These banks were prohibited from lending money to the Government, except to the very limited amounts above referred to. The Government was a contributor to their common stock, to the extent of two millions in the First and seven millions in the Second Bank. True, the other subscribers were authorized to pay a portion of their contributions to the capital stock in Government bonds (three-fourths in the First and two-thirds in the Second Bank). Then there was the facility of making deposits of Government moneys as collected, at the offices of the bank and at its branches and the convenience of transmitting public moneys from one part of the country to another and of making payments by means of bills issued by the bank. *But the real accomplishment of the establishment of the bank was its effect upon public credit,* and the results of the attack upon and the destruction of the bank twenty years later, was so to impair the public credit as to bring on the panic of 1837 and consequent great disorder in public and private finances for years afterwards.

With the sudden extension of the financial wants of the Government resulting from the Civil War, came a new realization of the needs of a Federal banking system, not only for its effect upon public and private credits, but directly to enable the Government to meet the financial requirements of war, and to supply the country with a currency adequate to its needs.

The National Banking Act.

The latter was the need uppermost in the minds of the framers of the Act of Congress which was passed June 3, 1864, entitled "An Act to provide a National Currency, secured by a Pledge of United States Bonds, and to provide for the Circulation and Redemption thereof" (13 Stats., 99). The act first established a separate bureau in the Treasury Department charged with the execution of this and all other laws that might be passed by Congress respecting the issue and regulation of the National currency secured by United States bonds.

By Section 5, it provided for the formation of associations for carrying on the business of banking, each such association to be a body corporate; the stock to be subscribed for by individuals, and no capital to be less than $100,000, except that, with the approval of the Secretary of the Treasury, banks with a capital of not less than $50,000 might be established in places with a population not exceeding 6,000. Such associations were authorized to

> "exercise under this act all such incidental powers as shall be necessary to carry on the business of banking by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; by obtaining, issuing, and circulating notes according to the provisions of this act; * * *."

The general scheme of the act looked to the issue by these banks of their notes, designed to circulate as money, to an amount not in excess of 90 per cent. of the par value of United States bonds deposited by the issuing bank in the National Treasury as security for the payment of the notes, which were to be legal tenders for the payment of all public and private debts (with certain exceptions).

The constitutionality of the National Banking Act was never *directly* questioned. It was *incidentally* involved in the cases which questioned the validity of the legal tender provisions and the constitutionality of State legislation affecting the operation of the banks. The legality of the provisions making National bank notes a legal tender for the payment of debts was assailed in

Legal Tender Cases, 12 Wall., 457.

The entire act was there upheld as a constitutional exercise of congressional power. The Court referred to the state of the country pending the Civil War, which gave rise to the condition in which the public treasury was nearly empty, and the credit of the Government had become nearly exhausted, while of foreign credit it had none; that at the time of such emergency the Legal Tender Acts were passed, and that they undoubtedly were appropriate means of meeting those conditions; that, even if it were conceded that some other means might have been chosen for the accomplishment of this legitimate and necessary end, the concession did not weaken the argument. Congress had the choice of means for a legitimate end, each appropriate and adapted to that end, though perhaps in different degrees, and it was not for the Court to criticize the selection made by it in carrying out its constitutional powers.

> "The degree of the necessity for any congressional enactment, or the relative degree of its ap-

propriateness, if it have any appropriateness, is for consideration in Congress, not here" (pp. 541-542).

In the opinion of the Court, per STRONG, J., it was stated that

> "the whole history of the government and of congressional legislation has exhibited the use of a very wide discretion, even in times of peace and in the absence of any trying emergency, in the selection of the necessary and proper means to carry into effect the great objects for which the government was framed, and this discretion has generally been unquestioned, or, if questioned, sanctioned by this court. This is true not only when an attempt has been made to execute a single power specifically given, but equally true when the means adopted have been appropriate to the execution, not of a single authority, but of all the powers created by the Constitution. * * * Under the power to regulate commerce, provision has been made by law for the improvement of harbors, the establishment of observatories, the erection of lighthouses, breakwaters, and buoys, the registry, enrolment, and construction of ships, and a code has been enacted for the government of seamen. Under the same power and other powers over the revenue and the currency of the country, for the convenience of the treasury and internal commerce, a corporation known as the United States Bank was early created. To its capital the government subscribed one-fifth of its stock. But the corporation was a private one, doing business for its own profit. Its incorporation was a constitutional exercise of congressional power for no other reason than that it was deemed to be a convenient instrument or means for accomplishing one or more of the ends for which the government was established, or, in the language of the first article, already quoted, 'necessary and proper' for carrying into execution some or all the powers vested in the government. Clearly this necessity, if any

> existed, was not a direct and obvious one. Yet this court, in *McCulloch* v. *Maryland* (4 Wheaton, 416), unanimously ruled that in authorizing the bank, Congress had not transcended its powers" (p. 537).

Having in mind the rules of constitutional construction adopted in the *McCulloch* and other cases, the Court said:

> "Before we can hold the legal tender acts unconstitutional, we must be convinced that they were not appropriate means, or means conducive to the execution of any or all of the powers of Congress, or of the government, not appropriate in any degree (for we are not judges of the degree of appropriateness), or we must hold that they were prohibited."

These banks were held not liable to the provisions of a State statute respecting the amount of interest which might be charged upon loans made by them; that they were exclusively governed by the provisions of the act of Congress under which only the entire interest which the debt carried was forfeited in the case of exaction of usury, in

> *Farmers' National Bank* v. *Dearing*, 91 U. S., 29.

In that case, the Court said (per SWAYNE, *J.*):

> "The constitutionality of the act of 1864 is not questioned. It rests on the same principle as the act creating the second bank of the United States. The reasoning of Secretary Hamilton and of this court in *McCulloch* v. *Maryland* (4 Wheat., 316) and in *Osborne* v. *The Bank of the United States* (9 *Id.*, 708), therefore, applies. The national banks organized under the act are instruments designed to be used to aid the government in the administra-

tion of an important branch of the public service. They are means appropriate to that end. Of the degree of the necessity which existed for creating them Congress is the sole judge."

They were held not liable to taxation upon their franchises or intangible property by a State, in

Owensboro N. Bank v. *Owensboro*, 173 U. S., 664,

upon the ground that they are instrumentalities of the Federal Government created for a public purpose.

To the same effect, in

Easton v. *Iowa*, 188 U. S., 220.

United States Postal Savings System.

The next step in the extension by Congress of direct Federal control over National credits, was the establishment of a banking system in the Post Office Department. By Act of June 25, 1910 (36 Stats., 814), a Postal Savings Depositary Office was created in the Post Office Department under the control of a Board of Trustees consisting of the Postmaster-General, the Secretary of the Treasury and the Attorney-General, for the receipt, transmittal, custody, deposit, investment, and repayment of funds deposited with them—in other words, a bank for the reception of deposits of amounts, originally limited to not exceeding $1,000 per person, but under recent amendment unlimited, upon which a low rate of interest was allowed. These funds, so deposited, were required in turn to be deposited in solvent banks organized under National or State laws, or invested in bonds or other securities of the United States (see U. S. Compiled Statutes, 1918, Secs. 7588-7590).

The constitutionality of this act was attacked in the Senate by Senator Rayner, of Maryland; Senator Bailey,

of Texas, and Senator Stone, of Arkansas. Its constitutionality was upheld by Senator Sutherland, of Utah, upon the ground that the act would bring more money into circulation, and, therefore, came within the power of Congress to coin money and to regulate commerce; that it was also within the post office power, and the proposed amendments authorizing the investment in Government bonds would bring it within the power to borrow money. Senator Root, supporting an amendment proposed by him authorizing investment in Government bonds, did so upon the ground that this would clearly bring the act within the borrowing power, and make it constitutional. In the House of Representatives, Mr. Moon maintained that the act could not be supported under the General Welfare Clause or the Post Office Clause; that it did not come within the power to borrow money, because the revenue so derived was not for the maintenance and support of the Government, if it were loaned to banks, and investment in Government bonds was made discretionary with the President. On the other hand, the general trend of the discussion in support of the bill put its constitutionality upon the power to borrow money and the General Welfare Clause.

This system has brought in an increasing amount of money. Deposits for the year ending June 30, 1913, amounted to $33,818,870. For the year ending June 30, 1919, the aggregate amount was $167,323,260. This sum, largely made up of deposits by foreign residents of the United States, in small amounts, was distributed and deposited in 5,211 banks, of which 3,239 were National and 1,972 State institutions; $29,253,900 was invested in United States bonds (see Report of Post Office Department, Fiscal Year ending June 30, 1919).

Federal Reserve Law.

The next step was the enactment of the Federal Reserve Law in December, 1913 (38 Stats. at L., 251). The most important defects which had developed in the existing banking system were decentralized reserves, immobilized commercial paper, inelastic note issues, and the absence of a central controlling authority. The chief purpose of the act was stated in the report of the Senate Committee to be

> "to give stability to the commerce and industry of the United States, prevent financial panics or financial stringencies, make available effective commercial credit for individuals engaged in manufacturing, in commerce, in finance, and in business, to the extent of their just deserts; put an end to the pyramiding of the bank reserves of the country and the use of such reserves for gambling on the stock exchange" (Senate Report No. 133, Part 1, 63rd Cong., 1st Session).

It is unnecessary to explain here the details of the system established by the Federal Reserve Act or the functions of the Federal Reserve Banks established in each of the districts into which the United States is divided pursuant to the act. The chief work of the Reserve Banks is the rediscounting of commercial paper. The most serious defect found in the existing banking system was in the cash reserves kept by the banks against their deposits, and the effect upon each bank of sudden emergencies or unexpected requirements of a larger amount of money than the deposit reserve. Under the new law, any bank which is a member of the Federal Reserve System may replenish its reserve when it wishes, by taking to the Reserve Bank of its district any commercial paper whose date of maturity at the time is not more than ninety days distant, and the Reserve Bank is

empowered to rediscount this paper at a rate subject to review and determination by the Federal Reserve Board (see "The Operation of the New Banking Act," by Conway and Patterson, Chapters 1 and 2).

Requirements of Loans Upon Land Security as Affecting Public Credit.

The authors of the work last cited call attention to one great factor affecting public credit, namely: the requirements of land owners for loans secured by mortgage upon their lands. They say:

> "A factor which has been largely responsible for the rapid growth in the number and resources of State banks has been the wider latitude which they have enjoyed in making loans and investments. One of the most important advantages which they possess is the power quite generally given to make loans within certain limitations upon real estate mortgages. The most valuable class of assets of any nation is its land, for from it, directly or indirectly, comes all the wealth of the country, and the sustenance of its people. With banks situated in rural districts or in the smaller towns where the holdings of corporate securities are not apparently so great, the most common asset of value is real estate" (Conway and Patterson, p. 332).

The history of banking in the United States shows that as early as 1686, it was proposed to the authorities of the Colony of Massachusetts to set up a bank to issue notes and make loans on the security of land and imperishable merchandise. This scheme was approved and authorized.

> "All that is known of the history of this association, the first chartered bank in Massachusetts, is found in a brief reference to it made by an

anonymous author of a pamphlet printed in 1714. 'Our fathers about 28 years ago entered into a partnership to circulate their notes founded on land security, stamped on paper, as our Province bills, which gave no offense to the government then, etc.' " (Sumner, History of Banking, Vol. 1, p. 4).

"In the history of the early Massachusetts banks we see the first development of the antagonism between commercial banking and agricultural banking. * * * The jealousy of the rural population in respect to banks led them to insist upon inserting in bank charters a provision that a certain fraction of the capital should be loaned on mortgage of land. * * * A generation later * * * people came to say that banks were a curse to all agricultural interests and persons. We shall see that in the history of banks in this country, it has been a question of paramount importance, what is the utility of banks to farmers and how is it to be realized? From the standpoint of commercial banking with ninety-day paper, a loan to a farmer for a year with a stipulated renewal was bad banking; but on the other hand such a loan could never answer the purpose of the farmer. Repayment within a year is for him vexatious and impracticable. He needs loans for years or for an unlimited period. Never until modern institutions of credits suited to the necessities of the case grew up, did this antagonism of facts, interests and institutions pass away" (Sumner, p. 39).

The extent of the requirements of land credit is shown in a table incorporated in the report of the United States Comptroller of the Currency for the year 1915, by which it appears that the total amount of loans secured by mortgage on real estate for that year was $643,388,896, and the total amount of loans secured by other collateral was only a little more than twice that amount, namely, $1,410,021.422.

The effect upon National credit of the proper financ-

ing of this vast requirement became increasingly apparent, and a provision was inserted in the Federal Reserve Act of 1913, authorizing any National banking association not situate in a central reserve city to make loans secured by improved and unencumbered farm land for a time no longer than five years, and to an amount not exceeding 50 per cent. of the actual value of the property offered as security, such loans being limited in the aggregate to 25 per cent. of the capital and surplus of the lending bank, or one-third of its time deposits (Sec. 24).

At the same time, it was realized that this provision would not afford a complete solution of the problem of financing the farmer, nor would it meet the requirement of bringing under more comprehensive Federal direction and control the entire subject of rural long-time credits. Accordingly, Congress appointed a commission to investigate and study in European countries co-operative land mortgage banks, co-operative rural credit unions, and similar organizations and institutions devoting their attention to the promotion of agriculture and the betterment of rural conditions, which commission made its report to Congress on January 29, 1914 (Doc. No. 380, Senate, 63rd Cong., 2d Session).

The commission, in its report, referred to the establishment and history of the land banks in France, known as *Crédits Fonciers*, for the purpose of advancing money on mortgages of real property, repayable in instalments over a long period, as well as to similar institutions in Germany, Italy and other countries.

Agricultural credit, the Committee said, naturally divides itself into two great classes—namely, long term, or land mortgage credit, which may be briefly defined as "credit to meet the capital requirements of the farmer," and short term, or personal credit, which may be defined

as "credit to meet the current or annually recurring needs of the farmer." In the European system of agricultural banks, the distinction between these two classes of credits is sharply drawn. To meet the requirements of the two classes, separate institutions are provided, differing fundamentally in their plan of organization and operation. The Committee pointed out that the farmers' capital requirements, by which is meant the need of the farmer for large sums of money to use in paying the purchase price of the farm, making improvements, etc., must be in the shape, more or less, of a permanent investment, or of loans extending over a long period of time, which can be gradually reduced and paid off out of the increased earnings derived from the improvement made or the equipment added by the farmer with the proceeds of such loans; whereas, his temporary or annually recurring requirements, meaning the money needed by him to finance his operations during the time the crops are being raised, can be accommodated by credits extending from thirty or ninety days to one year. The Committee referred to the so-called mortgage banks which have grown up in Europe, saying:

> "One general principle which underlies the mortgage banks of Europe is the issue of bonds which are based on the collective value or security of many individual mortgages on real estate. It is the merging of the credit demands and the property resources of many individuals somewhat similarly situated into one financial transaction * * *. These bonds are justly popular and have made possible the construction of many mighty works of civilization." * * *
>
> "Land-mortgage bonds, when issued under rigid Government supervision, form an ideal kind of investment or trust security, because they bear a fair rate of interest, command a ready market, and exhibit great stability of value. All speculation is avoided by restricting mortgage banks to

> the granting of loans to private owners of land; and when such loans are granted, to the issuing of collateral trust bonds only to the amount of the loans. The capital of the bank is required to be invested chiefly in other safe interest-bearing securities, and this remains as an additional security to the holders of the bonds. Under these conditions such bonds are of the highest type of absolutely safe investment. Their value in no wise depends upon speculative elements and varies but little, presenting a favorable contrast with railway and commercial stocks and bonds * * *" (pp. 23-24). * * *

In closing this section of its report the commission referred to the fact that

> "the commercial world has had constructed for it a magnificent system of commercial banks; the frugal laborers and savers of the cities have their system of savings banks and building and loan associations, and the great corporations have their trust companies. All of these and other similar financial institutions assist in the financing of the agricultural industry to some extent, but none of them is adequate or can be made adequate to supply this special need without a sacrifice to their present field of endeavor. The commission recognizes that too great ease in borrowing should not be encouraged, since this might result in an unreasonable increase in farm debt. On the other hand, it should not be forgotten that under the present system tenancy continues to increase and farmers have outstanding obligations easily exceeding two billions of dollars secured by mortgages on their farms, much of which was negotiated under very unfavorable circumstances and with very high rates of interest. It is believed that under the plans which have been formulated herein, and which are intended to be supplementary to the existing system, tenancy may be decreased, the needs of farmers be taken care of, and at the same time the outstanding obligations may be refunded on

> much more favorable terms and gradually reduced by the regular payment of small annual instalments impossible under the general system now found in this country."

The Committee attached to its report a proposed law which was introduced in both houses of Congress, considered in Committee, reported out with amendments, debated during several days in both houses, and finally passed as the Act now under consideration.

The Committee on Banking and Currency of the House of Representatives, in its report, said:

> "The immediate purpose of this bill is to afford those who are engaged in farming or who desire to engage in that occupation a vastly greater volume of land credit on more favorable terms and at materially lower and more nearly uniform interest rates than at present available."
>
> "The means whereby this purpose is to be accomplished is provided through the establishment of national-chartered and Government-supervised organizations to grant long-time, amortizable loans at low interest rates upon farm-mortgage security; to assemble in each organization individual farm mortgages into one collective security; and to issue upon this collective security credit instruments to be known as farm-loan bonds of such safety and soundness as to command the investment funds of the country in abundance."

The principal objection to the bill was made upon the ground that these banks would be just what the appellant at bar argues they are not, namely, *financial institutions for Government purposes.*

During the debates in the Senate, Mr. Gronna objected to the Joint Stock Banks provided for in the bill, upon the ground that they would be "simply another financial banking institution which would supersede the institutions which we now have"

(53 Cong. Rec., p. 7382). Senator Lodge presented a memorandum entitled "Government Savings Bank Features of the Hollis Bill," which, after analyzing the provisions of the bill, concluded with the following:

> "In view of these clauses, the Federal Land Banks would be government banks for savings and deposits while their entire resources may be used in financing government projects instead of in farm mortgaging."
>
> "The total tax exemptions, together with the free or cheap money supplied in cash by the Secretary of the Treasury, or through the issue of five per cent. bonds, or any other kind of credit instrument, would place building and loan associations, mutual savings banks, life insurance companies and every other kind of existing lending, savings or thrift association, and all other monied corporations at a disadvantage with the new institutions to be formed, unless the states also should enact laws exempting all money and credits from taxation."

This memorandum noted, among other things, that

> "Joint Stock Land Banks may use all resources in dealing in bonds of the United States Government" (citing Sec. 18) (53 Cong. Rec., p. 7128).

There was some discussion in the Senate over the constitutionality of the proposed measure, although the principal debate concerned the clauses which exempted the operations of the proposed banks from taxation. Senator Williams maintained,

> "there is no difference between the National Banking Act and this act, except the differences that grow out of the very character and nature, not of Federal jurisdiction, not of the extent of power granted by the Constitution to the Federal Government, but of the business carried on one the one side by the commercial people and on the other side by the agricultural people."

Senator Cummings, while opposing the exemption clauses, expressed the belief that Congress had as much authority to pass the bill as it had authority to create National banks.

> "I should like to see them," he said, "stand as a part of the fiscal system of the United States in exactly the same way as national banks stand" (p. 7317).

Senator Walsh referred to the decisions which upheld the constitutionality of the National banks as necessary and convenient instrumentalities for the purpose of carrying on the fiscal operations of the Government, and declared himself unable to distinguish in principle between these new National banks proposed to be brought into existence under the Farm Loan Bill and the existing National banks. It is true, he said,

> "that the national banks now in existence have the power to issue their notes payable on demand, and that those notes circulate practically as money, but wherein in principle do these obligations differ" (referring to the proposed farm loan bonds) "from the obligations those banks issue that are designated as bonds" (53 Cong. Rec., pp. 7373-7376).

In the House of Representatives, Mr. Finley, discussing the exemption clauses, said:

> "The United States is the last of the great nations to take up the all important question of rural credits. The most important matter confronting any of the people is the maintenance of an adequate food supply, and this can be done only by a prosperous and contented rural population. The most startling development of the last twenty-five years has been the phenomenal growth of our cities. This has been somewhat at the expense of the farms, though not to such an extent as to give cause for great concern as yet. The countries of Europe have recognized the necessity for improv-

ing conditions for the farmers, who in turn are responsible for the food production of the country. The United States, through the Department of Agriculture, has been doing something of late years in the way of dispensing information, conducting experiments, and so forth, for the farmer along agricultural lines and better roads.

"But there remains the question of credit for the farmer, and about this as yet nothing has been done. There are in this country about 12,000,000 farmers; the value of their farm property, including animals, amounts to $40,000,000,000. The value per annum of all farm products is about $10,000,000,000, and it has been estimated that the average gross income of a farmer in this country is $791. A large part of this is consumed on the farm; the remainder is sold, and out of the proceeds the farmer makes up all expenses incurred, including his debts or interest on same, if any. It has also been estimated that the farmers owe about $6,000,000,000, over $2,000,000,000 of which are secured by mortgages on their homes and farms. They pay interest at rates ranging from 6% to 25% per annum in the form of interest, commissions, lawyers' fees, and renewal charges, making an estimated annual interest charge of $510,000,000, which is equivalent to a rate of about 8½%. These figures are taken from reports of legislative committees and public officials, and I have no doubt of their accuracy. The rates vary in the different sections of the country—low rates in the northern section east of the Mississippi River, high in the section west of this river and in the Southern States.

"The high interest shows at once the heavy burden of debt carried by the farmers. This burden could be greatly lightened by securing money at more reasonable rates of interest. Only in the United States, of all the great countries of the world, must the farmers go into the money markets in competition with business men, whose profits are made in a shorter time, and, not being so largely dependent on the seasons, are made with

> greater certainty. Other countries provide a means for the farmer to borrow money for strictly agricultural purposes at rates of interest that make probable to the farmer some profit on the year's work. There is no reason why farmers should not borrow money without difficulty on first mortgages at 4 and 5 per cent., and, at most, 6 per cent. And this is what rural credits legislation proposes to accomplish. It would save to the farmers at least $250,000,000 a year in interest charges alone. The plan is to issue bonds to the amount of the mortgages, sell the bonds to obtain money, loan this twenty times in all. * * *"

While the political aspect of the matter, that is, the benefit to the farmers in providing a system whereby they might secure loans for the development of their industry upon terms reasonably adapted to their condition, was most prominent in the debates in Congress, yet the larger consideration of the effect upon the public credit of the proposed new banking system was, as the quotations from the debates above given show, constantly referred to. It could hardly have been otherwise. Assuming the substantial accuracy of Mr. Finley's figures, that the farmers of the country owe upwards of $2,000,000,000 secured by mortgage on their homes, the establishment of a system which would provide for the renewal of these loans extending over a long period of years, repayable by periodical amortization payments, upon reasonable rates of interest, must vitally affect the general money market, and directly reflect upon the fiscal operations of the Government. The practical operations of the act have demonstrated the tremendous importance to the Government of the establishment of this new system. There are annexed as exhibits to this brief, consolidated statements showing (a) the condition of the twelve Land Banks and (b) that of the twenty-nine Joint Stock Land Banks, at the close of business August 31,

1920. These statements show that the total capital of the Federal Land Banks is $24,428,972.50, only $6,832,680 of which is now held by the Government. These banks have loaned $346,507,855.16 upon farm mortgages, against which they have issued and now have outstanding $327,495,000 in bonds secured by these mortgages. The statement does not show what amount of these bonds was held on that date by the United States Government, but our information is that the amount is $175,000,035.

The report of the condition of the Joint Stock Land Banks shows that their aggregate capital and surplus amounts to $8,595,601.61. These banks have loaned an aggregate of $79,209,884.14 on farm mortgages, against which they have issued, and now have outstanding, $60,089,300 in bonds secured by these mortgages.

Under the system heretofore existing, the interest rates upon farm mortgages varied from 5½ to 10½ per cent. per annum, and sometimes higher, besides which the borrower was charged a commission of from 3 to 6 per cent. cash on a five-year 6 per cent. loan and as high as 2 per cent. commission for an extension of a loan for one year. The Farm Loan Act provides ready loans at a rate not exceeding 6 per cent. per annum, and *no* cash commission. The repayment of the principal is spread over a long period of years, and yet these loans are made liquid assets through the medium of the bonds issued against the aggregate of a large number of the mortgages, backed, in the case of the Federal Land Banks, by the combined resources of all the banks of the system, and in the case of the Joint Stock Land Banks by the double liability of the stockholders of each bank.

The greatest asset of the nation consists in the value of its cultivable lands. Yet it is estimated that over 60 per cent. of these lands are at present uncultivated. The great need of the country, the great need of the Government, in providing revenues to meet the high

national debt resulting from the war, is that the agricultural resources of the country be developed to the utmost. But "the expansion of the nation's agriculture is limited by the supply of labor and capital available for farming purposes" (see Report, Secretary of Agriculture, 1919). By means of credits provided by the Farm Loan Act, the amount of national capital available for production is greatly increased, and a very great economy of the national resources effected. The system of repaying land credits by small periodical payments extending over a period of years, made possible by the issue of bonds under this act, will tend materially to prevent financial panics and financial stringency and thus contribute to the successful conduct of the Government's financial operations.

The amortization payments required to be made by the borrowers from Farm Loan and Joint Stock Land Banks by Section 22 of the act, are constituted a trust fund, which only can be invested as therein permitted; one of the methods authorized being in United States Government bonds. Both classes of banks, by Section 6, when designated by the Secretary of the Treasury, are made depositaries of public money, except receipts from customs and financial agents of the Government, under such regulations as may be prescribed by the Secretary, who must require of them satisfactory security, by the deposit of Government bonds, or otherwise for the faithful performance of their duties as such agents.

The statements appended hereto show that on August 31, 1920, the twelve Federal Land Banks held among their assets $7,583,227.77 in United States Government bonds and securities, and the twenty-nine Joint Stock Land Banks held $3,132,089.62 in like bonds and securities. Thus it is apparent that with the growth of the amortization funds, a widening market will be created for United States bonds.

The beneficial results above described of the Farm Loan System certainly cannot successfully be claimed to be without an obvious and logical effect upon the fiscal operations of the United States Government, and it safely may be said of these banks, as it was of the old United States Bank, that

> "the time has passed away when it can be necessary to enter into any discussion in order to prove the importance of this instrument as a means to effect the legitimate objects of the government" (*McCulloch* v. *Maryland*, 4 Wheat., 316, 423).

POINT VI.

The general purposes of the Farm Loan Act might have been attained by Congress through the direct exercise of the powers of taxation and borrowing.

The appellant hardly will dispute in this Court certain propositions which he expressly conceded on the argument in the District Court, viz., that Congress having power to borrow money and to levy and collect taxes, can appropriate public moneys under the general welfare clause, even for a purpose not expressly authorized by the Constitution; that the stimulation of agriculture is a public purpose for which Congress may appropriate moneys, and that it may apply the moneys so appropriated through the mechanism of a corporation created or adapted by it for the purpose. These propositions are established by authority beyond the possibility of serious dispute.

The history of the embodiment in the Federal Reserve Act of the limited authorization to national banks to loan on farm lands (39 Stats., 752, 754) has been given.

But a recognition of the fact that these provisions were inadequate to provide for credits extending over a

period of years secured by real estate security, led to the enactment of the Farm Loan Act.

The House Committee on Banking and Currency, in reporting the bill on May 3, 1916 (Report 630), said:

> "It has become manifest that a new form of credit organization must be established which shall be especially and peculiarly adapted to the farmer's requirements. It must be designed to give a service that commercial banks, savings banks, insurance companies, individuals, and other existing agencies cannot give at the present time. For example, it must be enabled and prepared to grant long-time amortizable loans upon farm-land mortgages at low interest rates; it must be enabled to secure ample funds for the use of the farmer from the investing public. Under such a system the farmer borrower will not be compelled to assume a high interest rate mortgage obligation due within a comparatively short period of time under which he is subjected to frequent renewals with the incidental trouble, expense, and danger of foreclosure, and will not be dependent upon credit obtained under the most exacting and burdensome conditions."

The creation of such a national system of rural credits is a great public purpose which Congress might have provided for, either by direct appropriation, or through the existing national and reserve bank system, or by the creation of new agencies especially adapted to the designated end.

It was characterized by the Secretary of the Treasury in his report to Congress for the year 1918, as

> "the great governmental agency for financing a basic industry of the United States—that of agriculture."

(*a*) The power of Congress to raise and appropriate money for the general purpose of aiding in the develop-

ment of agriculture in general hardly can be questioned. It rests upon the powers granted by Article I, Section 8, of the Constitution, which reads:

> "The Congress shall have power
>
> "(1) To lay and collect taxes, duties, imposts, excises, to pay the debts and provide for the common defense and general welfare of the United States;
>
> * * * * * * *
>
> "(2) To borrow money on the credit of the United States;
>
> * * * * * * *
>
> "(18) To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

The weight of authority is to the effect that the proper construction of paragraph (1) above quoted is, that the power to lay and collect taxes is not unlimited, but is qualified by the second part of the paragraph, namely, *for the purpose of* providing for the common defense and promoting the general welfare (*Miller's Lectures on The Constitution,* p. 230; *Story on The Constitution,* Secs. 907, 908, 909, 922).

(*b*) It is equally well settled, that the power of taxation thus granted is not confined to the purpose of revenue, nor limited in its objects to those purposes which are enumerated in the paragraphs following the first in Section 8 of Article I (1 *Story,* Secs. 925, 975-978).

In Section 978, Judge STORY refers to Hamilton's Report on Manufactures, 1791, and in Section 979, to President Monroe's Message concerning the bill appropriating for repairs to the Cumberland road.

In the report, Hamilton pointed out that the power of Congress to raise money was plenary,

> "and the objects to which it may be appropriated are no less comprehensive than the payment of public debts and the providing for the common defense and general welfare."

Considering this phrase, "general welfare," he said:

> "And there seems no room for a doubt that whatever concerns the general interests of learning, of agriculture, of manufactures, and of commerce, are within the sphere of the national councils, *so far as regards an application of money.* The only qualification of the generality of the phrase in question which seems to be admissible is this, that the object to which an appropriation of money is to be made must be *general* not *local*—its operation extending in fact or by possibility throughout the union, and not being confined to a particular spot."

Story, commenting on these opinions, refers to the practice of the government as having been "entirely in conformity to the principles here laid down." Appropriations, he says,

> "have never been limited by Congress to cases falling within the specific powers enumerated in the Constitution, whether those powers be considered in their broad, or their narrow sense" (§991).

He refers to a number of striking instances of appropriations for purposes, none of which was within any of the express powers granted in the succeeding paragraphs of Section 8 after paragraph (1).

See also *Willoughby on The Constitution,* Sec. 269.

(*c*) The only limitation upon the power of Congress to appropriate moneys is that the purpose shall be public

and general as distinguished from private. Even this limitation is not always observed.

It seems to have been recognized from the foundation of the government that the power of Congress to appropriate is co-extensive with the power to tax (*Story on Constitution*, Secs. 922, 924), and in fact, in the exercise of the power of appropriation, the practice has been even broader than the scope of the power to tax. As Prof. Willoughby says:

> "The limitation that an appropriation should be for a public purpose has been without practical effect as the courts have in no case attempted to hold invalid an appropriation by Congress on the ground that it has been for a purpose not public in character; and as regards the restriction that appropriations shall be in aid of enterprises which the federal government is empowered to undertake, the doctrine has become an established one that Congress may appropriate money in aid of matters which the federal government is not constitutionally able to administer and regulate" (§269).
>
> "It has been generally held, however, that a tax may be levied avowedly and exclusively not for revenue but as a means for regulating a matter which is within the legislature's power to control. Thus in *Veazie Bank* v. *Fenno*, 8 Wall., 533, the power of Congress to levy a tax as a means of regulating the currency is upheld."

Willoughby on The Constitution, Sec. 263, citing *Head Money Cases*, 112 U. S., 580.

Congress also may by a law framed as a tax measure in effect subject to regulation or even to destruction, an enterprise over which it has no direct power of control, 1 *Willoughby*, Sec. 263, citing *McCray* v. *U. S.*, 195 U. S., 27, upholding a prohibitive tax on oleomargarine artificially colored to resemble butter.

See also *Flint* v. *Stone Tracy Co.*, 220 U. S., 107, 169.

The great scope of the legislative power to tax is described by Judge COOLEY (*Const. Lim.*, pp. 184-185) in the following language:

> "Taxes should only be levied for those purposes which properly constitute a public burden. But what is for the public good, and what are public purposes, and what does properly constitute a public burden, are questions which the legislature must decide upon its own judgment, and in respect to which it is vested with a large discretion which cannot be controlled by the courts, except perhaps where its action is clearly evasive, and where under pretence of a lawful authority, it has assumed to exercise one that is unlawful. Where the power which is exercised is legislative in character, the courts can enforce only those limitations which the constitution imposes; not those implied restrictions which, resting in theory only, the people have been satisfied to leave to the judgment, patriotism and sense of justice of their representatives."

Willoughby (Sec. 268) says, that while the validity of the proposition that taxation can be levied only for public purposes is beyond dispute, judicial records furnish comparatively few instances of tax levies being held void for this reason:

> "This is due in the first place to the fact that not often do the laws expressly state the purpose for which a tax is levied, and in the second place, where this purposes is stated, the courts will, in deference to the legislative judgment, construe the purpose to be a public one if it is possible to do so."

He quotes *Brodhead* v. *City of Milwaukee*, 19 Wis., 624, where it was said:

> "To justify the court in arresting the proceedings and declaring a tax void, the absence of all

possible public interest in the purpose for which the funds are raised must be clear and palpable to every mind at the first blush."

Willoughby distinguishes *Loan Association* v. *Topeka*, 20 Wall., 655, in that the case did not involve a law levying a tax, but one authorizing towns to issue bonds payable to private manufacturing companies to encourage and aid them in establishing their plants within their respective jurisdictions. It was there held by the Court that inasmuch as taxes would have to be levied for the payment of these bonds, the law in effect attempted to authorize the towns to levy taxes in aid and encouragement of a private purpose, and was, therefore, void. MILLER, J., said, referring to decisions which had upheld taxation in aid of the building of railroads, that in all those cases the decision turned upon the finding that the building of a railroad was for a public purpose; that railroads had not lost this public character because constructed by individual enterprise aggregated into a corporation. It was further said (p. 664):

"The courts can only be justified in interposing when a violation of this principle is clear and the reason for interference cogent. And in deciding whether, in the given case, the object for which the taxes are assessed falls upon the one side or the other of this line, they must be governed mainly by the course and usage of the government, the objects for which taxes have been customarily and by long course of legislation levied, what objects and purposes have been considered necessary to the support and for the proper use of the government, whether State or municipal. Whatever lawfully pertains to these and is sanctioned by time and the acquiescence of the people may well be held to belong to the public use, and proper for the maintenance of good government, though this may not be the only criterion of rightful taxation."

United States v. *Gettysburg Electric Railway*, 160 U. S., 668, involved the constitutionality of an act of Congress providing for the acquisition, through the exercise of the power of eminent domain, of property at Gettysburg, to be used for the purpose of preserving the lines of the great battle fought there, and for properly marking with tablets the positions occupied by the various commands of the armies on that field, for opening and improving avenues along the positions occupied by troops, etc. Appropriations had been made for the purpose of carrying out the provisions of the act. The plans made pursuant thereto involved taking lands which the Gettysburg Electric Railway Company was occupying as a part of its right of way. The District Court held the act to be unconstitutional. This was reversed in the Supreme Court, PECKHAM, J., writing the opinion, the initial statement of which is that

> "The really important question to be determined in these proceedings is, whether the use to which the petitioner desires to put the land described in the petitions is of that kind of public use for which the government of the United States is authorized to condemn land. It has authority to do so whenever it is necessary or appropriate to use the land in the execution of any of the powers granted to it by the Constitution." It has "the great power of taxation, to be exercised for the common defense and general welfare."

It was then held that the proposed use to which this land was to be put was a public use within these powers.

> "Any act of Congress which plainly and directly tends to enhance the respect and love of the citizens for the institutions of his country and to quicken and strengthen his motives to defend them, and which is germane to and intimately connected with the appropriate exercise of some one or all of the powers granted by Congress must be valid. This proposed use comes within such description."

In the *Legal Tender Case*, 110 U. S., 421, the power of Congress to make the treasury notes of the United States a legal tender in payment of private debts, in time of peace as well as in time of war, was upheld. The Court (per GRAY, J.) said (p. 444):

> "The words 'to borrow money,' as used in the Constitution, to designate a power vested in the national government, for the safety and welfare of the whole people, *are not to receive that limited and restricted interpretation and meaning which they would have in a penal statute, or in an authority conferred, by law or by contract, upon trustees or agents for private purposes.*"*
>
> "The power 'to borrow money on the credit of the United States' is the power to raise money for the public use on a pledge of the public credit, and may be exercised to meet either present or anticipated expenses and liabilities of the government. It includes the power to issue, in return for the money borrowed, the obligations of the United States in any appropriate form, of stock, bonds, bills or notes; and in whatever form they are issued, being instruments of the national government, they are exempt from taxation by the governments of the several States. *Weston* v. *Charleston City Council*, 2 Pet., 449; *Banks* v. *Mayor*, 7 Wall., 16; *Bank* v. *Supervisors*, 7 Wall., 26. Congress has authority to issue these obligations in a form adapted to circulation from hand to hand in the ordinary transactions of commerce and business. In order to promote and facilitate such circulation, to adapt them to use as currency, and to make them more current in the market, it may provide for their redemption in coin or bonds, and may make them receivable in payment of debts to the government. So much is settled beyond doubt * * *."

*Italics ours.

It is true that in *United States* v. *Realty Co.*, 163 U. S., 427, the Supreme Court declined to pass upon the constitutionality of provisions in the Tariff Act of 1890 which granted bounties to producers of sugar within the United States, because those provisions had been repealed and the specific question before the Court was as to the right of Congress to recognize the moral claim of producers who had qualified under the bounty act to receive payments from the government, but whose claims had not been paid before the repeal of the law, and in whose favor Congress had passed an act providing for payment of those claims. It was held that whether the bounty act were constitutional or not, the producers had a moral claim against the government, which Congress had a right to recognize, even though the claim were not of a strictly legal character. The Court said:

> "Of course, the difference between the powers of the state legislatures and that of the Congress of the United States is not lost sight of, but it is believed that in relation to the power to recognize and to pay obligations resting only upon moral considerations or upon the general principles of right and justice, the Federal Congress stands upon a level with the state legislature" (p. 443).

(*d*) The encouragement, stimulus and improvement of agriculture is a public purpose, and appropriations for such objects are for the general welfare. Such appropriations have been made by Congress from an early date in our history. As Chief Justice MARSHALL in *M'Culloch* v. *Maryland*, 4 Wheat., 316, 401, said:

> "It will not be denied, that a bold and daring usurpation might be resisted, after an acquiescence still longer and more complete than this. But it is conceived that a doubtful question, one on which human reason may pause and the human judgment be suspended, in the decision of which the great principles of liberty are not concerned, but

> the respective powers of those who are equally the representatives of the people, are to be adjusted, if not put at rest, by the practice of the government, ought to receive a considerable impression from that practice. An exposition of the constitution, deliberately established by legislative acts, on the faith of which an immense property has been advanced, ought not to be lightly disregarded."

As early as 1839, Congress passed an appropriation bill for the collection of statistics on agriculture by the Commissioner of Patents (5 Stats., 354).

In 1857, this power was enlarged to the extent of directing the Commissioner to procure and distribute cuttings and seeds, and to investigate the consumption of cotton throughout the world (11 Stats., 221, 226). From time to time, similar appropriations were made, and on May 15, 1862, the Department of Agriculture was created (12 Stats., 387), and the statistics and powers of the Commissioner of Patents were transferred to this new department. The act creating this department (now U. S. R. S., Sec. 520, *et seq.*) reads as follows:

> "There shall be at the seat of Government a Department of Agriculture, the general design and duties of which shall be to acquire and diffuse among the people of the United States useful information on subjects connected with agriculture, in the most general and comprehensive sense of that word, and to procure, propagate and distribute among the people new and valuable seeds and plants."

In 1889, an appropriation was made to the Entomological Commission under the Department of the Interior for the investigation of the Rocky Mountain locust or grasshopper and the cotton worm, but it was provided that such work in the future should be under the Department of Agriculture (21 Stats., p. 259).

Numerous appropriations have been made for the use and purposes of the Department of Agriculture since its creation. Thus, in 1863, an appropriation was granted (12 Stats., 682, 691),

> "for the collection and compiling of agricultural statistics; for promoting agricultural and rural economy; and the procurement, propagation, and distribution of cuttings and seeds of new and useful varieties; and for the introduction and protection of insectivorous birds; and for the purpose of establishing a laboratory, with the necessary apparatus for practical and scientific experiments in agricultural chemistry * * *."

In 1884, a bureau of the Department of Agriculture was organized (23 Stats., 31), known as the Bureau of Animal Industry, to investigate and collect such information about domestic animals, their diseases, etc.,

> "as shall be valuable to the agricultural and commercial interests of the country."

In 1890, Congress created a Weather Bureau in the Department of Agriculture, the duties of which formerly had been performed by the Signal Corps of the Army (26 Stats., 653).

U. S. Comp. Stats., Section 8870, July 2nd, 1862, Chap. 130, Section 4, 12 Stats., 503, amended March 3rd, 1883, Chap. 102, 22 Stats. 484, provides for the establishment of State Agricultural Colleges. These may be formed from the proceeds of the sale of lands apportioned to the States, and from the sale of land scrip, these proceeds to be kept as a trust fund.

Section 8871 provides further appropriations for these colleges, in each of which there is located an agricultural experiment station.

Section 8879 enacts:

"It shall be the object and duty of said experiment stations to conduct original researches or verify experiments on the physiology of plants and animals; the diseases to which they are severally subject, with the remedies for the same; the chemical composition of useful plants at their different stages of growth; the comparative advantages of rotative cropping as pursued under a varying series of crops; the capacity of new plants or trees for acclimation; the analysis of soils and water; the chemical composition of manures, natural or artificial, with experiments designed to test their comparative effects on crops of different kinds; the adaptation and value of grasses and forage plants; the composition and digestibility of the different kinds of food for domestic animals; the scientific and economic questions involved in the production of butter and cheese; and such other researches or experiments bearing directly on the agricultural industry of the United States as may in each case be deemed advisable, having due regard to the varying conditions and needs of the respective States or Territories."

(March 2nd, 1887, Chap. 314, Sec. 2, 24 Stats., 440.)

Section 776, Comp. Stats. (March 2nd, 1889, Chap. 411, Sec. 1, 25 Stats., 939, 960), established an

"Irrigation Survey: For the purpose of investigating the extent to which the arid region of the United States can be redeemed by irrigation and the segregation of irrigable lands in such arid region, and for the selection of sites for reservoirs and other hydraulic works necessary for the storage and utilization of water for irrigation and for ascertaining the cost thereof, and the prevention of floods and overflows, and to make the necessary maps, including the pay of employees, in field and office, the cost of all instruments, apparatus, and materials, and all other necessary expenses con-

nected therewith, the work to be performed by the geological survey under the direction of the Secretary of the Interior * * *."

In 1917, Congress passed an act in regard to pink bollworm (40 Stats., 345, 374), a menace to cotton, which is as follows:

> "On account of the menace to cotton culture in the United States arising from the existence of the pink bollworm in Mexico, the Secretary of Agriculture, in order to prevent the establishment and spread of such worm in Texas and other parts of the United States, is authorized to make surveys to determine its actual distribution in Mexico; to establish, in co-operation with the States concerned, a zone or zones free from cotton culture on or near the border of any State or States adjacent to Mexico; and to co-operate with the Mexican government or local Mexican authorities in the extermination of local infestations near the border of the United States."

Provisions also are contained in the statutes for the preparation and issue periodically of farmers' bulletins (34 Stats., 669, 690), for the investigation and demonstration within the United States to determine the best method of obtaining potash on a commercial scale (39 Stats., 446, 465), and for many other objects of real or supposed interest to the agricultural interests of the country.

Indeed, so greatly have the activities of the Department of Agriculture been increased and diversified in recent years that its disbursements of appropriations made by Congress for purposes within its jurisdiction reached in 1917 the sum of $29,587,149.95, and in 1918 the sum of $45,759,461.46. The last mentioned sum included the following amounts:

For stimulating agriculture and facilitating distribution of products	$6,349,055.19
Plant industry expenses	2,099,749.80
Purchase of seeds	245,270.00

None of these objects is within the expressed powers of Congress. They rest for their authority on the power to levy taxes to provide for the common defence and promote the general welfare of the Union, and to appropriate moneys so raised to such purposes.

The total expenditures of the Department of Agriculture for 1920 were $51,647,400, and the estimated expenditures for 1921, $77,206,650. See Report Secy.-Treas., 1920, pp. 203-205.

It can hardly be denied that Congress, if it chose, instead of accomplishing the purposes of the Farm Loan Act by the mechanism of the different classes of corporations authorized by it, might have appropriated moneys to be raised by taxation, or provided for the annual issue and sale of government bonds, the proceeds realized in either case to be loaned out on farm mortgages, under the same restrictions as to interest, terms of repayment, etc., as those contained in the Farm Loan Act, under the direct administration of the Treasury or of any other department of the United States Government.

The vital importance to the nation of encouraging the development of its agricultural resources has been abundantly demonstrated during the recent war. It is equally important to the immediate future. No satisfactory development will be possible unless the farmers can secure needed moneys at moderate rates of interest and on easy terms of repayment. The ordinary banks of issue and discount cannot bear this burden. The rates and terms exacted by the great moneyed and insurance corporations, even if the funds at their disposal were adequate—which they are not—are more onerous than those which the government through the mechanism of the Farm Loan Act can provide. There is no public purpose more vital to the entire nation than that which moved Congress to the enactment of this law. The appellant wholly misses its object and the great public importance of its enactment, in his imperfect and prejudiced interpretation of

its purpose and meaning. The *main* purpose of the agencies created by the act is the performance of the great governmental function of establishing great instruments for the improvement of public credit, to aid in the stimulation and development of the agriculture of the country, and to make more efficient the fiscal operations of the National Government; the private and proprietary features of the corporations authorized, with their closely restricted possible profits, are but incidental and secondary.

POINT VII.

Having the power to raise money for the purposes under consideration by taxation or borrowing, and to apply it directly, through the Treasury Department or any other department of the Government selected for the purpose, Congress may accomplish the same ends through corporate instrumentalities adapted to or created for the purpose.

Congress is the exclusive judge of the method of accomplishing the ends above described. It may create corporations empowered to raise the necessary funds by stock subscription, bond issue, or deposits, to be loaned on farm mortgages, regulating the method of conducting the business so as to ensure its successful prosecution, and aiding, so far as it may deem expedient, by the loan of government funds or credit. This it first attempted through the National Banking Associations and the Federal Reserve Banks. The inadequacy of that machinery being recognized, the system embodied in the Farm Loan Act was adopted.

(*a*) Since the great cases of

McCulloch v. *Maryland*, 4 Wheat., 316, and
Osborn v. *Bank*, 9 Wheat., 738,

the power of Congress to create corporations to carry out any of its powers no longer can be questioned.

The power was held to be included in the right of any sovereign government which is empowered to do a particular act and has imposed upon it the duty of performing that act, to be allowed to select the means according to the dictates of reason.

See, also,

Luxton v. *North River Bridge Co.*, 153 U. S., 525-529.

In that case it was held (p. 530) that

> "although Congress may, if it sees fit and as it has often done, recognize and approve bridges erected by authority of two States across navigable waters between them, it may, at its discretion, use its sovereign powers, directly or through a corporation created for that object, to construct bridges for the accommodation of interstate commerce by land, as it undoubtedly may to improve the navigation of rivers for the convenience of interstate commerce by water."

(*b*) The circumstance that capital stock of the Federal Land Banks *may*, and that of the Joint Stock Land Banks *must* be subscribed and held by private individuals, and that profits realized in the business of each may be distributed among such shareholders, does not make the enterprise a private, not a public one, nor restrict the powers of Congress over the corporations, their property or business.

The constitutionality of the act creating the United States Bank, in which the government was merely a minority stockholder, was upheld upon the ground that it was created for public purposes, and was adopted by Congress as an expedient method of exercising the powers vested in it to lay and collect taxes, to borrow money,

etc.; that the powers given to the Congress implied ordinary means of execution, and that a corporation was a convenient, a useful, and an essential instrument in the prosecution of the fiscal operations of the government. See *Osborn* v. *Bank*, 9 Wheat., 738, 860.

Answering the question, why it is that Congress can incorporate or create a bank, MARSHALL, *C. J.*, in *Osborn* v. *Bank*, said (p. 861):

> "This question was answered in the case of *M'Culloch* v. *The State of Maryland*. It is an instrument which is 'necessary and proper' for carrying on the fiscal operations of the government."

The national banks authorized to be established under the Act of Congress of June 3rd, 1864 (13 Stat., 99), were to be formed by private individuals who should subscribe and hold the stock and distribute among themselves by way of dividends all the profits of the enterprise. Yet their constitutionality was upheld, resting, as the Supreme Court said in *Farmers' National Bank* v. *Dearing*, 91 U. S., 29, on the same principle as the act creating the Second Bank of the United States:

> "The national banks organized under the act are instruments designed to be used to aid the government in the administration of an important branch of the public service. They are means appropriate to that end. Of the degree of necessity which existed for creating them, Congress is the sole judge" (pp. 33-34).

Davis v. *Elmira Savings Bank*, 161 U. S., 275;

Owensboro National Bank v. *Owensboro*, 173 U. S., 664;

Easton v. *Iowa*, 188 U. S., 220;

to the same effect.

(*c*) Congress is the sole judge of the extent and

measure of the powers to be conferred upon the banks or other corporations which it creates to carry out purposes which it might constitutionally accomplish by other methods.

> MARSHALL, C. J., in *M'Culloch* v. *Maryland*, 4 Wheat, 316, 421.

In *Easton* v. *Iowa* (*supra*), the conclusion was reached that, as Congress had power to create a system of national banks, it was the judge as to the extent of the powers which should be conferred upon them, and had the sole power to regulate and control the exercise of their operations.

Appellant's contention that Congress has no power to provide for the organization, by private individuals for private profit, of private corporations, with power to issue the obligations of such private corporations, etc., exempt from taxation, need not be disputed if there were no other consideration involved. But where such corporations, so empowered, as in the case of national banks, or as in the present instance, are authorized by Congress for some public governmental purpose as well, their legality is unquestionable. In its application to the Federal Farm Loan System, appellant's contention is competely met by Chief Justice MARSHALL's opinion in *Osborn* v. *Bank*, 9 Wheat., 738, 859.

The Court in that case demonstrated and held that the power of Congress extended over the faculties, trade and occupation of the bank, as well as its corporate existence; that the trade of the bank was essential to its character as a machine for the fiscal operations of the government, and, therefore, must be as exempt from State control as the actual conveyance of the public money.

> "National banks," said the Court, in *Davis* v. *Elmira Savings Bank*, 161 U. S., 275, 283, "are instrumentalities of the Federal Government,

> created for a public purpose, and as such necessarily subject to the paramount authority of the United States."

And in *Easton* v. *Iowa*, 188 U. S., 220, 229, it was said:

> "Having due regard to the national character and purposes of that system, we cannot concur in the suggestions that national banks, in respect to the powers conferred upon them, are to be viewed as solely organized and operated for private gain."

The conclusion announced was "upon principle and authority," that Congress, having power to create a system of national banks, is the judge as to the extent of the powers which should be conferred upon such banks, and has the sole power to regulate and control the exercise of their operations.

(*d*) The banks of the Federal Farm Loan System, like those of the National Banking System, are public corporations, "created for public and national purposes." Their creation is not authorized for their own sakes or for private purposes. Their incorporation, government and operations are under strict federal control. They are called into existence to accomplish the great national purposes described in the title to the act, and to relieve the national banks of a character of fiscal operation which, though capable by law of discharge by such banks, can better be performed by banks especially organized for its conduct.

(*e*) Appellant argues, that considered as an appropriation measure, the means adopted in the enactment of the Farm Loan Act are not necessary nor proper to the end in view. He says:

> "The end to be accomplished by this legislation was not the development of agriculture or the stabilization of farm credits. No power to develop agriculture or stabilize farm credits can be found

anywhere in the Constitution. It cannot rest under the General Welfare Clause any more than could the power to reclaim arid lands."

The appropriation of moneys for the development of agriculture as one of the great national purposes involved in the public welfare is too well established by legislative practice since the foundation of the government to require argument. *Kansas* v. *Colorado*, 206 U. S., 46, decided nothing which militates against the exercise by Congress of the powers expressed in the Farm Loan Act.

That case involved no question of the constitutional exercise by Congress of its legislative power. The two States, parties to the suit, were concerned in a controversy respecting the right of Colorado to divert waters of the Arkansas River for the irrigation of lands within its territory, which Kansas claimed prevented the natural and customary flow of the river into and through its territory. The Attorney-General of the United States filed on behalf of the United States an intervening petition claiming a right to control the waters of the river to aid in the reclamation of arid lands owned by the United States. It was not averred that the diversion of the waters tended to diminish the navigability of the river, but it was asserted that there was a superior authority and supervisory control in the United States over the States, to regulate the flow and appropriation of the river. The argument was that, in view of the conflict of interest between two or more states, the Nation, as incident to its inherent sovereignty, had the implied power to intervene and control. The Court pointed out that there was involved no question of the power of the National Government over the navigability of a stream; that the Government distinctly asserted that the Arkansas River was not and never had been practically navigable, and

nowhere claimed that any appropriation of the waters by Kansas or Colorado affected its navigability.

> "It rests its petition of intervention," said Mr. Justice BREWER, "upon its alleged duty of legislating for the reclamation of arid lands; alleges that in or near the Arkansas River, as it runs through Kansas and Colorado, are large tracts of those lands; that the National Government is itself the owner of many thousands of acres; that it has the right to make such legislative provision as in its judgment is needful for the reclamation of all these arid lands and for that purpose to appropriate the accessible waters. * * * In other words, the determination of the rights of the two States *inter sese* in regard to the flow of waters in the Arkansas River is subordinate to a superior right on the part of the National Government to control the whole system of the reclamation of arid lands. That involves the question whether the reclamation of arid lands is one of the powers granted to the General Government" (206 U. S., at pp. 86-87).

This question was answered in the negative. It was held, that, within its own borders, each State had full jurisdiction over the lands and other waters, including the beds of streams, and the complaint of one State as to the effect of action by the other was held to present a justiciable controversy within the jurisdiction of the Supreme Court. The question there considered was totally different from the one at bar. Here, we are dealing with the exercise by *Congress* of its *legislative* power; there, the *Executive* branch of the Government sought to intervene as "steward of the public welfare," asserting an implied power in Congress which was nowhere expressed, and which this Court held was not properly to be implied from any express power. The fact that the United States

owned a large amount of public land which was arid was one of the reasons alleged for the intervention, but the actual position taken was, that there was an implied power in the United States to govern the reclamation of arid lands because of the importance of that reclamation. The case did not involve in any aspect the question of the right of the Federal Government directly or indirectly to appropriate money in aid of agriculture. The same question would be presented here, if the Government were claiming the power to legislate in regulation of the method of farming within the States, instead of merely creating machinery to raise and lend moneys to farmers on reasonable terms, to encourage them to develop and increase the agricultural productivity of the country, upon which the public welfare so greatly depends, thereby releasing banks of discount and issue of the burden of this financing, and strengthening and improving the public credit.

(*f*) Having provided for the creation of these land banks with the purpose above described primarily in view, Congress has also adapted them to other legitimate federal purposes.

In *Easton* v. *Iowa*, 188 U. S., 220, the Court (SHIRAS, J.), said (p. 238):

> "Our conclusions, upon principle and authority, are that Congress, having power to create a system of national banks, is the judge as to the extent of the powers which should be conferred upon such banks, and has the sole power to regulate and control the exercise of their operations."

Section 6 of the Farm Loan Act provides that:

> "All Federal land banks and joint stock land banks organized under this Act, when designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, except re-

> ceipts from customs, under such regulations as may be prescribed by said Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them * * *."

By Section 32, the Secretary of the Treasury is empowered, upon the request of the Farm Loan Board, to make deposits of public moneys for the temporary use of any Federal Land Bank, upon terms and conditions specified in the section.

Having in mind, also, the vast demands upon the national treasury imposed by conditions resulting from the war, and the need of creating constantly widening markets for United States bonds, the title to the Farm Loan Act expressly states one of its purposes to be *"to furnish a market for United States bonds."* Provisions are found in Sections 5, 6, 13 (Eighth), 18 and 22 for investment in these bonds, as well as for the purchase by the Treasury Department of bonds issued by the banks of the Farm Loan System.

If any portion of the business which these land banks are authorized to conduct be within the power of Congress to authorize, the courts may not segregate those objects from other corporate authority conferred and, while upholding part, condemn the rest. All alike must be regarded as authorized.

Judge Story (2 Comm., Sec. 1269), in discussing the power of Congress to create a bank as an appropriate means of carrying into effect some of the enumerated powers of government, says:

> "In regard to the faculties of the bank, if congress could constitutionally create it, they might confer on it such faculties and powers as were fit to make it an appropriate means for fiscal opera-

> tions. They had a right to adapt it in the best manner to its end. No one can pretend that its having the faculty of holding a capital; of lending and dealing in money; of issuing bank notes; of receiving deposits; and of appointing suitable officers to manage its affairs; are not highly useful and expedient and appropriate to the purposes of a bank. * * * No man can say that a single faculty in any national charter is useless, or irrelevant or strictly improper, that is conducive to its end as a national instrument. Deprive a bank of its trade and business, and its vital principles are destroyed. * * * All the powers given to the bank are to give efficacy to its functions of trade and business."

First National Bank v. *Union Trust Co.*, 244 U. S., 416, involved the validity of provisions in the Federal Reserve Bank Act (38 Stats., 251, 262), which authorized national banks to act as trustee, executor, administrator or registrar of stocks and bonds.

Quoting from *Osborn* v. *Bank*, 9 Wheat., 738, WHITE, C. J., said:

> "The ruling in effect was that although a particular character of business might not be when isolatedly considered within the implied power of Congress, if such business was appropriate or relevant to the banking business the implied power was to be tested by the right to create the bank and the authority to attach to it that which was relevant in the judgment of Congress to make the business of the bank successful. It was said: 'Congress was of opinion that these faculties were necessary, to enable the bank to perform the services which are exacted from it, and for which it was created. This was certainly a question proper for the consideration of the national legislature' (p. 864)" (p. 420).

The Court said that the test of the existence of the power to grant the particular functions in question must be met by considering the Bank

> "as created by Congress as an entity with all the functions and attributes conferred upon it" (p. 424).

It was held that a determination could not be made as to a given power upon a separation of the particular functions from the other attributes and functions of the bank. Referring to *McCulloch* v. *Maryland*, 4 Wheat., 316, and *Osborn* v. *The Bank*, 9 Wheat., 738, it was further said:

> "What those cases established was that although a business was of a private nature and subject to state regulation, if it was of such a character as to cause it to be incidental to the successful discharge by a bank chartered by Congress of its public functions, it was competent for Congress to give the bank the power to exercise such private business in co-operation with or as part of its public authority. Manifestly this excluded the power of the State in such case, although it might possess in a general sense authority to regulate such business, to use that authority to prohibit such business from being united by Congress with the banking function, since to do so would be but the exertion of State authority to prohibit Congress from exerting a power which under the Constitution it had a right to exercise" (p. 425).

The Farm Loan Act has been accurately described as follows:

> "The act creates an organization for pecuniary aid alone; that is, it is concerned only with the application of money. There is no attempt to conduct agricultural activities within the State, to undertake the management of farm property, to

> manage or control any internal concerns of the State, or to interfere with the exercise of the authority of the States over lands within their borders."

Every principle upon which the constitutionality of the National Banking Act has been upheld applies with equal force to the Farm Loan Act.

POINT VIII.

The provisions exempting from taxation, State or Federal, the mortgages executed to Federal Land Banks or Joint Stock Land Banks, and Farm Loan bonds issued by either class of banks under the provisions of the Farm Loan Act, and the income derived therefrom, are within the powers of Congress to enact.

Having the power to create these corporations and to provide through their instrumentality for the purposes mentioned, Congress may protect them by exempting their operations from taxation to the extent it deems necessary. This has been done by Section 26 of the act, which reads as follows:

> EXEMPTION FROM TAXATION.
>
> "SEC. 26. That every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of section eleven and section thirteen of this Act. First mortgages executed to Federal land banks, or to joint stock land banks, and farm loan bonds

issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation.

Nothing herein shall prevent the shares in any joint stock land bank from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the bank is located; but such assessment and taxation shall be in manner and subject to the conditions and limitations contained in section fifty-two hundred and nineteen of the Revised Statutes with reference to the shares of national banking associations.

Nothing herein shall be construed to exempt the real property of Federal and joint stock land banks and national farm loan associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed."

There can be no question of the power of Congress to grant to the Farm Loan Bonds exemption from Federal taxation.

Leaving out of consideration for the moment any question of the validity of the exemption of the Farm Loan Bonds from *State* taxation, let us examine the question of Federal taxation.

At the outset it is important to note that Congress has not attempted to violate its exemption of the Farm Loan Bonds from all Federal taxes. The only existing United States tax law under which it might be supposed they might be taxed is the Federal Income Tax Law (40 Stat., 1057) and that statute (in its definition of gross income, Sec. 213, 4, b) expressly exempts them from taxation. So we start from the position that under existing Federal tax laws Farm Loan Bonds are not taxable, and move to

the question whether Congress has the power to promise to continue that exemption.

Congress has the undoubted power, subject only to the constitutional limitation as to uniformity, to declare the objects or subjects which it will tax. This power is plenary and practically not subject to judicial review. Thus in *Flint* v. *Stone Tracy Company,* 220 U. S., 107, at page 169, the Court said:

> "The taxing power conferred by the Constitution knows no limit except that expressly stated in that instrument."

It should be remembered that in the *Stone Tracy* case this Court (p. 173) expressly upheld the constitutionality of the exemption of income of agricultural associations from the Income Tax Act of 1909 (36 Stat., 11). See also *McCray* v. *U. S.,* 195 U. S., 27.

Congress clearly has the power to decide not to tax any Farm Loan Bond and it has done just that. So likewise, Congress has the undoubted power not only thus to classify the objects of taxation and leave some entirely free from tax for reasons which seem to it good, but also the right to lay down policies of tax exemptions; to grant tax exemptions permanently or for a limited period, and to promise tax exemptions. Thus Congress promised an exemption from state taxation on Indian lands for a period of years and that declaration was held effective by this Court in *U. S.* v. *Rickert,* 188 U. S., 432. This Court early declared the power of the States to grant exemptions from taxation, and went further and held that contracts of exemption thus made by the States were protected by the Constitution of the United States and were not revocable. Such is the holding of *New Jersey* v. *Wilson,* 7 Cranch 164, where MARSHALL, C. J., declared unconstitutional an act repealing an exemption from taxation attaching to certain New Jersey lands.

The power of Congress to choose the objects of its own taxation and to pledge the faith of the United States to the continuation of a policy of exemption and to make contracts of exemption, is likewise undoubted—not the less so although it may not be protected by any constitutional prohibition against any subsequent Congressional action. The question of exemption of the Farm Loan Bonds from Federal taxation is a pure question of tax policy with which and with the practical wisdom of which the Courts have nothing to do—that point of the case is not open to controversy.

Indeed, the APPELLANT has made no contention to the contrary of this proposition, either in his briefs, or in his oral arguments.

The Exemption of the Farm Loan Mortgages and Bonds from State Taxation also Is Within the Power of Congress.

Granting the power of Congress to incorporate these institutions, the power to protect the property and the business and the instrumentalities of the banks from State taxation rests upon elementary principles. The power to tax is the power to destroy (*McCulloch* v. *Maryland,* 4 Wheat., 316, 431; *Loan Association* v. *Topeka,* 20 Wall., 655, 663; *Weston* v. *Charleston,* 2 Pet., 449).

That a State may not by taxation or otherwise hamper the operation of an agency of the Federal Government has been settled since the decision in *McCulloch* v. *Maryland,* 4 Wheat., 316. See *Farmers and Mechanics Savings Bank* v. *Minnesota,* 232 U. S., 516, 521. The power of the States to tax shares in National Banks depends upon the permission to do so granted by Congress. A tax upon farm mortgages taken, or Farm Loan bonds issued by Federal Land Banks or Joint Stock Land Banks, would be a tax on the operations of these banks

and not only would hamper, but might wholly destroy their ability to carry out the purposes of Congress. These securities are adopted by Congress as instrumentalities in carrying out the great public purpose of the establishment and successful operation of the Farm Loan System. Even in the absence of express exemption, it is doubtful if the States might tax their operations (*Farmers and Mechanics Savings Bank* v. *Minnesota,* 232 U. S., 516). But Congress has removed all doubt by the clear enactment of exemption.

In *Farmers and Mechanics Savings Bank* v. *Minnesota,* 232 U. S., 516, it was held that municipal corporations established in territories of the United States are instrumentalities of the Federal Government and therefore the States may not tax bonds issued by them.

In *Fidelity and Deposit Co.* v. *Pennsylvania,* 240 U. S., 319, plaintiff, a Maryland surety company, claimed that in becoming a surety upon bonds required by the United States, it acted as a federal instrumentality and was not subject to State taxation on the premiums received. *Congress had not attempted to exempt it from such taxation.* While it was recognized that the tax was an exaction for the privilege of doing business, and it was conceded that "a State may not directly and materially hinder the exercise of Constitutional powers of the United States by demanding in opposition to the will of Congress that a Federal instrumentality pay a tax for the privilege of performing its functions," it was held that "mere contracts between private corporations and the United States do not *necessarily* render the former essential governmental agencies and confer freedom from state control" (p. 322). The Court also pointed out that Congress had not attempted to exempt such corporation from taxation.

On the other hand, in *Indian Territory Illuminating Oil Co.* v. *Oklahoma,* 240 U. S., 522, oil leases of lands in

Oklahoma made by an Indian tribe under the authority of acts of Congress were held to be under the federal protection, and the lessee a federal instrumentality, and it was decided that the State could not tax the interest of the lessee in the leases directly, and could not tax the capital stock of the corporation owning them. A tax upon the lease was held to be a tax upon the power to make the lease. *Choctaw & Gulf R. R.* v. *Harrison*, 235 U. S., 292, was relied upon. There it was held that the agreement between the United States and certain Indian tribes ratified by Act of Congress (30 Stats., 495, 510), imposed upon the United States a definite duty in respect to opening and operating the coal mines upon their lands. The appellant railroad company, in conformity with the provisions of the Act, had taken leases of certain of the mines, obligating itself to mine annually specified amounts of coal and to pay agreed royalties, and was therefore held to be the instrumentality through which the Government was carrying its obligations into effect. Such instrumentality, it was held, could not be subjected to an occupational or privilege tax by the State.

In *Farmers' National Bank* v. *Dearing*, 91 U. S., 29, it was held that national banks were not subject to State statutes regulating the amount of interest which might be charged by a bank doing business within the State upon loans made by it; that such banks were instruments designated to be used to aid the Government in the administration of an important branch of the public service; that they were a means appropriate to that end, and that of the degree of the necessity which existed for creating them, Congress was the sole judge. The Court, per SWAYNE, J., said:

> "Being such means, brought into existence for this purpose and intended to be so employed, the States can exercise no control over them, nor in any wise affect their operation, except in so far

> as Congress may see proper to permit. Anything beyond this is 'an abuse, because it is the usurpation of power which a single State cannot give.' Against the national will, the States have no power, by taxation or otherwise, to retard, impede, burthen, or in any manner control, the operation of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government, * * * The power to create carries with it the power to preserve. The latter is a corollary from the former" (p. 34).

To the same effect, *Owensboro National Bank* v. *Owensboro*, 173 U. S., 664, where WHITE, J., said (p. 668):

> "It follows then necessarily from these conclusions that the respective states would be wholly without power to levy any tax, either direct or indirect, upon the national banks, their property, assets or franchises, were it not for the permissive legislation of Congress."

See also *Easton* v. *Iowa*, 188 U. S., 220; *Bank of California* v. *Richardson*, 248 U. S., 476.

Mercantile Bank v. *New York*, 121 U. S., 138, involved a consideration of the application of a tax law of New York to national banks. Speaking of the National Banking Act, the Court said:

> "The key to the proper interpretation of the act of Congress is its policy and purpose. The object of the law was to establish a system of national banking institutions, in order to provide a uniform and secure currency for the people, and to facilitate the operations of the Treasury of the United States. The capital of each of the banks in this system was to be furnished entirely by private individuals; but, for the protection of the government and the people it was required that this capital, so far as it was the security for its circulating notes, should be invested in the bonds of the United States. These bonds were not sub-

jects of taxation; and neither the banks themselves, nor their capital, however invested, nor the shares of stock therein held by individuals, could be taxed by the States in which they were located without the consent of Congress, *being exempted from the power of the States in this respect, because these banks were means and agencies established by Congress in execution of the powers of the government of the United States.* It was deemed consistent, however, with these national uses, and otherwise expedient, to grant to the States the authority to tax them within the limits of a rule prescribed by the law. In fixing those limits it became necessary to prohibit the States from imposing such a burden as would prevent the capital of individuals from freely seeking investments in institutions which it was the express object of the law to establish and promote. The business of banking, including all the operations which distinguish it, might be carried on under state laws, either by corporations or private persons, and capital in the form of money might be invested and employed by individual citizens in many single and separate operations forming substantial parts of the business of banking. A tax upon the money of individuals, invested in the form of shares of stock in national banks, would diminish their value as an investment and drive the capital so invested from this employment, if at the same time similar investments and similar employments under the authority of state laws were exempt from an equal burden. The main purpose, therefore, of Congress, in fixing limits to state taxation on investments in the shares of national banks, was to render it impossible for the State, in levying such a tax, to create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a similar business and operations and investments of a like character. The language of the act of Congress is to be read in the light of this policy" (p. 154).

The power of Congress to exempt the operations of the Land Banks as it has done is therefore amply sustained by authority. The statute carefully follows the precedents set in the case of National Banks.

POINT IX.

Congress might constitutionally have created both classes of banks to serve as depositaries of public moneys and financial agents of the government. That it chose also to empower them to loan moneys on farm mortgages, even if that were not within its power to grant, would not impair the legality of the incorporation, nor its jurisdiction to protect them against National or State taxation.

By Section 6 of the Act, the Secretary of the Treasury is authorized to designate both the Federal Land Banks and the Joint Stock Land Banks as depositaries of public moneys, and to employ any of them as financial agents of the government. It is of no consequence that this power has been so little exercised up to the present time. The entry of the United States into the war the year following the enactment of the Farm Loan Act, is a sufficient explanation for failure to put all of the provisions of the Act into effect. It is shown by the bill that the Treasury Department, under the authority of the amending Act of 1918, did make deposits of substantial amounts in eight different Federal Land Banks, and it also appears in the bill (Rec., p. 10) that during the summer of 1918, three of the Federal Land Banks were designated as financial agents of the government for the making of seed grain loans to farmers in drought-stricken sections. It is not necessary that a financial agent of the government should be a bank of discount and deposit. What is

required is, first, that such agent be an organization which may receive deposits where, for example, the money collected by the Internal Revenue authorities of the government may be deposited, such banks giving security for the safekeeping of the deposits in like manner as national banks do; secondly, that it have an organization appropriate to the receipt and disbursement of government moneys. The Treasury Department is constantly paying out money in every State of the United States. It is disbursing public funds in carrying out the ordinary transactions of the government. For this purpose, it avails of many different agencies, and these Land Banks may, in given instances, be peculiarly adaptable to service of that character; as was the case when, in the summer of 1918, the government set aside $5,000,000 to loan in small amounts to farmers to enable them to buy seed grain. The bill of complaint shows that the three Land Banks designated made upwards of 15,000 loans of that character, aggregating in all more than $4,500,000 (Rec., p. 10). Such financial agencies also may be called upon from time to time by the Secretary of the Treasury to sell the temporary certificates of indebtedness of the government; that is, to go out and find purchasers for these temporary certificates, which are issued by the Treasury for the purpose of facilitating the operations of the United States Treasury between the times when taxes are being received. The United States Treasury often needs money at times when taxes are not due. Instead of borrowing it from banks, it issues temporary certificates of indebtedness bearing interest at four or five per cent., and calls upon banks of all kinds to assist in marketing such certificates. Some banks take them as investments, employing a portion of their deposits or of their capital for that purpose. Others sell to investors, who buy them. The farmers are investors. In many cases they might be reached through

the Land Banks better than through the national banks, and it is thus readily apparent that this agency would be useful in circumstances of that character. These banks also may be employed by the Secretary of the Treasury as financial agents for the purpose of selling War Savings Stamps and Thrift Stamps. It has been the experience of the Treasury Department that too many agencies for that purpose cannot be found in the country. They also may be employed in selling the bonds of the government, as was the case with the various Liberty Loans. It is of the utmost importance that every possible purchaser may be reached, and organization of this description, dealing with farmers, may reach sources of investment which otherwise would not be attained. Congress obviously had in view these possibilities when it enacted in Section 6 the provision authorizing the Secretary of the Treasury to designate these two classes of corporations, to serve as depositaries of public money and as financial agents of the government. As time goes on and more banks are organized, they will become increasingly useful in assisting the Federal Government in the performance of its fiscal operations. If there were no other purpose than this for the creation of these corporations, could the Court say that Congress had exceeded its jurisdiction in authorizing their formation?

Appellant has sought in his brief to question the motives of Congress in enacting the Farm Loan Act (Brief, pp. 7, 8, 13). On the one hand, he calls the title to the act misleading, and in another place, he appeals to the title as showing that it is not an appropriation act—which nobody has ever claimed that it was. What the appellees contend is, that Congress had full power to provide by appropriation for the accomplishment of the purpose which it has created the machinery of this act to accomplish in a different way. That the courts will not attempt to restrain the exercise of a lawful power by Con-

gress on the assumption that a wrongful motive or purpose has caused the power to be exercised, has been long settled. (*McCray* v. *United States*, 195 U. S., 27, 53-59; *Red "C" Oil Co.* v. *North Carolina*, 222 U. S., 380.)

In *Florida Central & Peninsular R. R. Co.* v. *Reynolds*, 183 U. S., 471, the Court said (p. 480):

> "We must assume the legislature acts for the best interests of the State. A wrong intent cannot be imputed."

In *Ellis* v. *United States*, 206 U. S., 246, HOLMES, J., delivering the opinion of the Court, said:

> "It is true that it [Congress] has not the general power of legislation possessed by the legislatures of the States, and it may be true that the object of this law is of a kind not subject to its general control. But the power that it has over the mode in which contracts with the United States shall be performed cannot be limited by a speculation as to motives" (p. 256).

POINT X.

This appeal challenges the validity of an Act of Congress which was framed after extensive inquiry, unusual study and full debate, for the purpose of adequately providing for a great public need. As Chief Justice MARSHALL said of the Act incorporating the Second United States Bank, this Act "did not steal upon an unsuspecting legislature and pass unobserved" (*M'Culloch* v. *Maryland*, 4 Wheat., 316, 402).

Millions of dollars have been invested by the public in reliance upon its provisions and upon the faith of the exemption from taxation held out by Congress as an inducement to investors. Seldom has a controversy been presented to this Court which threatens such far-reach-

ing financial loss as would follow if the contention of the Appelant were upheld. In such circumstances, it is submitted that the entire absence of Constitutional power in Congress must be clearly demonstrated before the Court would declare worthless the millions of securities sold on the faith and credit of an Act of Congress so deliberately and so carefully enacted. We most earnestly submit that not only has this want of power not been established, but that the contrary is clearly demonstrated, and therefore that the decree appealed from which dismissed the bill should be affirmed.

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APPENDIX.

A.

The Federal Farm Loan Act.

Summary of Provisions.

The Federal Farm Loan Act was approved by the President July 17, 1916. It is entitled:

> "An act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create government depositaries and financial agents for the United States, and for other purposes."

Federal Farm Loan Bureau.

The administration of the Act is placed (Sec. 3) under the direction and control of a Federal Farm Loan Bureau, established at the seat of government, in the Treasury Department, under the general supervision of a Federal Farm Loan Board, consisting of the Secretary of the Treasury, who is ex-officio Chairman of the Board, and of four members appointed by the President, by and with the advice and consent of the Senate. One of the members is to be designated by the President as the Farm Loan Commissioner, who shall be the active executive officer of the Board.

Federal Land Banks.

The Board is required, as soon as practicable, to divide the continental United States, excluding Alaska, into twelve districts, apportioned with due regard to the farm loan needs of the country, which shall be known as

Federal Land Bank Districts, and to establish in each of said districts a FEDERAL LAND BANK (Sec. 4). Each of these banks must have, before beginning business, a subscribed capital of not less than $750,000, divided into shares of $5.00 each, which may be subscribed for and held by any individual, firm or corporation, or by the government of any state, or of the United States. No dividends shall be paid on the stock owned by the U. S. Government, but all other stock shall share in dividend distributions without preference (Sec. 5). Each National Farm Loan Association and the United States Govern ment are entitled to one vote for each share of stock held by them or it respectively. No other shareholder is permitted to vote (Sec. 5).

The Federal Farm Loan Board is to designate five directors who shall temporarily manage the affairs of each Federal Land Bank, and who shall prepare an organization certificate which, when approved by the Federal Farm Loan Board and filed with the Farm Loan Commissioner, operates to create the bank a body corporate, with the powers enumerated in the Act (Sec. 4). It is made the duty of the Federal Farm Loan Board to open books of subscription for the capital stock of a Federal Land Bank in each Federal Land Bank district, and if within thirty (30) days thereafter any part of the minimum capitalization of $750,000 of any such bank shall remain unsubscribed, it is made the duty of the Secretary of the Treasury to subscribe the balance on behalf of the United States (Sec. 5). The act imposes no liability upon the shareholders beyond the amount of their respective subscriptions to the stock.

The amending act of January 18th, 1918, which authorizes the Secretary of the Treasury during the years 1918 and 1919 to purchase bonds issued by Federal Land Banks, provides that the temporary organization of any such bank provided for in Section 4, shall be continued

so long as any Farm Loan Bonds purchased from it under the provisions of the amendment shall be held by the Treasury, and until the subscriptions to stock in such bank by National Farm Loan Associations shall equal the amount of its stock held by the United States Government. When these conditions are met, the permanent organization provided for in Section 4 is to take over the management of the bank. This permanent organization consists in a Board of Directors composed of nine members, each holding office for three years, six of whom, to be known as Local Directors, shall be chosen by, and be representative of, National Farm Loan Associations, and the remaining three directors, to be known as District Directors, shall be appointed by the Federal Farm Loan Board, one of whom shall be designated by it Chairman of the Board, and who shall represent the public interest.

The Federal Land Banks are empowered to invest their funds in the purchase of qualified first mortgages on farm lands situated within the Federal Land Bank District within which they are organized or acting (Sec. 13, par. 2).

National Farm Loan Associations.

Loans on farm mortgages are to be made to co-operative borrowers through the organization of corporations to be known as National Farm Loan Associations, by persons desiring to borrow money on farm mortgage security under the terms of the Act. Ten or more natural persons who are the owners or about to become the owners of farm land qualified as security for mortgage loans, and who desire to borrow money on farm mortgage security, may unite to form a National Farm Loan Association by complying with the provisions of Section 7 of the Act.

The articles of association when presented to the Federal Land Bank shall be accompanied by the written

report of a Loan Committee appointed in conformity with the Act, and by proof that each of the subscribers is the owner, or is about to become the owner, of farm land, qualified under Section 12 as the basis of a mortgage loan; that the loan desired by each person is not more than $10,000, nor less than $100, and that the aggregate of the desired loan is not less than $20,000; it must also be accompanied by a subscription to stock in the Federal Land Bank equal to five per centum (5%) of the aggregate sums desired on mortgage loans (Sec. 7). The Federal Land Bank must then have an appraisal made of the land, and report to the Federal Farm Loan Board its recommendation, upon which, if favorable, the Board shall grant a charter to the applicants, designating the territory in which the proposed association may make loans, whereupon the association is authorized and empowered to receive from the Federal Land Bank of the district sums loaned to its members under the terms and conditions of the Act. Thereafter any National Farm Loan Association may secure for any of its members a loan on first mortgage from the Federal Land Bank of the district; but, in connection with such application, it must subscribe and pay in cash for capital stock of the Land Bank to the amount of five per cent. (5%) of such loan, such stock to be held by the Land Bank as collateral security for its repayment, the association receiving any dividends accruing and payable on said stock while it is outstanding. Upon the payment of the mortgage loan the stock shall be retired. No persons but borrowers on farm land mortgage shall be members or shareholders of National Farm Loan Associations. Each shareholder is entitled to one vote for each share held by him at the elections of directors and other shareholders' meetings, provided no one shareholder shall cast more than twenty (20) votes. Shareholders in the National Farm Loan Associations are made individually responsible equally

and ratably for the debts of the Association, to the extent of the amount of stock owned by them respectively at its par value, in addition to the amount paid in and represented by their shares (Sec. 9).

Whenever any National Farm Loan Association shall desire to secure for any member a loan on first mortgage from the Federal Land Bank in its district, it must subscribe for capital stock of the Land Bank to the amount of five per cent. (5%) of such loan, the subscription to be paid in cash upon the granting of the loan. Such capital stock shall be held by the Land Bank as collateral security for the repayment of the loan, but the Association shall be paid any dividends accruing and payable on the capital stock while it is outstanding. Such stock may, in the discretion of the directors and with the approval of the Federal Farm Loan Board, be paid off at par and retired, and shall be so retired upon full payment of the mortgage loan. In such event, the National Farm Loan Association must pay off at par and retire the corresponding shares of its stock which were issued when the Land Bank stock so retired was issued; but it is further provided that the capital stock of the Federal Land Bank shall not be reduced under an amount less than five per cent. (5%) of the principal of the outstanding Farm Loan Bonds issued by it (Sec. 7). The shares in National Farm Loan Associations shall be of the par value of $5.00 each. No persons but borrowers on farm land mortgages may be members or shareholders of a National Farm Land Association.

Any person desiring to secure a loan through a National Farm Loan Association under the provisions of the Act shall make application for membership and shall subscribe for shares of stock in such Farm Loan Association, to an amount equal to 5 per cent. of the face of the desired loan, to be paid in cash on the granting of the loan. Upon such payment, the applicant becomes the

owner of one share of stock in said Loan Association for each $100 of the face of the loan. Such stock shall be paid off at par and retired upon full payment of the loan. It shall be held by the Association as collateral security for the loan, but the borrower shall be entitled to any dividends accruing and payable on the stock while it is outstanding (Sec. 8). Any person desiring to secure a loan through a National Farm Loan Association may at his option borrow from the Federal Land Bank, through such association, the amount necessary to pay for shares of stock subscribed for by him in the National Farm Loan Association, such sum to be made a part of the face of the loan, and to be paid off in amortization payments (Sec. 9). After the subscriptions to the capital stock by a National Farm Loan Association shall amount to $750,000 in any Federal Land Bank, said bank must apply semi-annually to the payment and retirement of the shares of stock which were issued to represent the subscriptions to the original stock, twenty-five per cent. (25%) of all sums thereafter subscribed to the capital stock until such original capital stock is retired at par.

At least 25 per cent. of that part of the capital of any Federal Land Bank for which stock is outstanding in the name of National Farm Loan Associations must be held in quick assets. Not less than 5 per cent. of such capital must be invested in U. S. Government Bonds (Sec. 5).

Federal Farm Loans.

The loans which Federal Land Banks may make upon first mortgages on farm lands are very carefully regulated and restricted by the provisions of Section 12 of the Act. These Banks, by Section 13 are empowered, subject to the limitations and requirements of the Act, to issue and sell Farm Loan Bonds of the kinds described in the Act, to invest funds in their possession in qualified

first mortgages on farm lands, to receive and to deposit in trust with the Farm Loan Registrar for the district, to be held by him as collateral security for Farm Loan Bonds, first mortgages upon farm land, qualified under Section 12, and, with the approval of the Federal Farm Loan Board, to issue and sell their bonds secured by the deposit of first mortgages on qualified farm lands as collateral, in conformity with the provisions of Section 18 of the Act. By the amendment of January 18, 1918, the Secretary of the Treasury was empowered during the years 1918 and 1919, to purchase Farm Loan Bonds issued by the Federal Land Banks to an amount not exceeding $100,000,000 in each year, and any Federal Land Bank was authorized at any time to repurchase at par and accrued interest, for the purpose of redemption or resale, any of the bonds so purchased from it and held in the U. S. Treasury. It is also provided, that the bonds of any Federal Land Bank so purchased and held in the Treasury one year after the termination of the pending war shall, upon thirty (30) days' notice from the Secretary of the Treasury, be redeemed and repurchased by such Bank at par and accrued interest. By Section 15, it is provided that whenever, after the Act shall have been in effect one year, it shall appear to the Federal Farm Loan Board that National Farm Loan Associations have not been formed and are not likely to be formed, in any locality, because of peculiar local conditions, the Board may in its discretion authorize Federal Land Banks to make loans on farm lands through agents approved by the Board, on the terms and conditions and subject to the restrictions prescribed in that Section.

Joint Stock Land Banks.

Another and different class of corporations to accomplish the objects of the Act, to be known as Joint Stock Land Banks, is provided for in Section 16. The capital of these corporations must be provided wholly by private subscription. They are to be organized by not less than ten natural persons subject to the requirements and under the conditions set forth in Section 4 of the Act, so far as the same are applicable. The Board of Directors shall consist of not less than five members. Each shareholder shall have the same voting privileges as have holders of shares in national banking associations, and is subject to the same double liability for debts of the Bank as is imposed upon shareholders in National Banks. A Joint Stock Land Bank shall be authorized to do business when capital stock to an amount of at least $250,000 has been subscribed, and one-half paid in cash, the balance remaining subject to call by the Board of Directors, and a charter issued by the Federal Farm Loan Board. Such a bank may not issue any bonds until after the capital stock is entirely paid up.

> "Except as otherwise provided, joint stock land banks shall have the powers of, and be subject to all the restrictions and conditions imposed on, Federal land banks by this Act, so far as such restrictions and conditions are applicable."
>
> (Sec. 16, par. 3.)

Federal Land Banks may issue Farm Loan Bonds up to twenty (20) times the amount of their capital and surplus (Sec. 14). Joint Stock Land Banks are limited to the issue of Farm Loan Bonds not in excess of fifteen (15) times the amount of their capital and surplus.

Joint Stock Land Banks can only loan on first mortgages upon land in the state where located or a state contiguous thereto. No loan on mortgage may be made by *any* Bank under the Farm Loan Act at a rate exceeding 6 per cent. per annum, exclusive of amortization

payments (Sec. 12, par. 3rd), and Joint Stock Land Banks in no case shall charge a rate of interest on farm loans exceeding by more than one per cent. (1%) the rate established for the last series of Farm Loan Bonds issued by them (Sec. 16), which rate may not exceed 5 per cent. per annum (Sec. 20). Federal Land Banks are authorized to charge applicants for loans and borrowers, under rules and regulations promulgated by the Federal Farm Loan Board, reasonable fees, not exceeding the actual cost of appraisal and the determination of title (Sec. 13, par. 9th). Joint Stock Land Banks shall in no case receive any commission or charge not specifically authorized by the Act.

Section 12 imposes very definite terms and conditions upon the making of loans by the Federal Land Banks.

Mortgages taken by Farm Loan Banks and Joint Stock Land Banks must contain agreements for the repayment of the loan on an amortization plan (Sec. 12, par. 2nd); the rate of interest charged on the loan is limited to six per cent. (6%), exclusive of amortization payments; and the loan shall not exceed fifty per cent. (50%) of the value of the land mortgaged, and twenty per cent. (20%) of the value of permanent insured improvements thereon. No loan shall be made except upon the favorable report of appraisers appointed by the Federal Farm Loan Board.

Farm Loan Bonds.

The provisions for the issue of Farm Loan Bonds secured by first mortgages on farm lands, or United States Government bonds, as collateral, which must be deposited with and held in trust by the Federal Farm Loan Registrar, are the same in the case of both the Federal Land Banks and the Joint Stock Land Banks. In each case, every step in the issue is made subject to approval of the Federal Farm Loan Board (Secs. 18, 19, 20, 22). The bonds are to be prepared and delivered to the banks by the Farm Loan Board (Sec. 20). The farm mortgages or U. S. bonds which constitute the collateral

security for the bonds, whether issued by Federal Land Banks or Joint Stock Land Banks, must be deposited with and held by the Farm Loan Commissioner (Secs. 18, 19). No bonds shall be issued except with the approval of the Federal Farm Loan Board, and upon the deposit of the mortgages securing the same with the Farm Loan Registrar (Sec. 19). The Federal Farm Loan Board may grant or refuse to any bank of either class, authority to make any specific issue of bonds (Sec. 17). By Section 16, bonds issued by the Joint Stock Land Banks are required to be so engraved as to be readily distinguishable in form and color from Farm Loan Bonds issued by Federal Land Banks, and otherwise to bear such distinguishing marks as the Federal Farm Loan Board shall direct. Such bonds issued by Joint Stock Land Banks are to be in form prescribed by Federal Farm Loan Board, and it must be stated in such bonds that the Bank is organized under Section 16 of the Act, is under Federal supervision, and operates under the provisions of the Act (Sec. 16). By Section 21, every Federal Land Bank in effect is made guarantor for the payment of all Farm Loan Bonds issued by all of the other Federal Land Banks, but the stockholders of such banks are not liable for its debts. In the case of Joint Stock Banks, no bank is liable for the debts of any other, but the stockholders have a double liability (Sec. 26).

Application of Amortization Payments.

By Section 22, amortization and other payments on the principal of first mortgages held by the Farm Loan Registrar as collateral security for the issue of Farm Loan Bonds constitute a trust fund in the hands of the Federal Land Banks or Joint Stock Land Banks receiving the same, and shall be invested only as presented in the Act, in Farm Loan bonds, first mortgages on farm lands or United States bonds.

Securities so purchased must forthwith be deposited with the Federal Farm Loan Registrar as substituted collateral security in place of the sums paid on the principal of indorsed mortgages held by him in trust.

Section 23, respecting the creation of reserves, applies equally to Federal Land Banks and Joint Stock Land Banks, and authorizes the declaration of dividends to shareholders of the respective banks of the balance of net earnings after creating the required reserves.

Tax Exemption.

Section 26 provides as follows:

> "That every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased or taken by said bank or association under the provisions of section eleven and section thirteen of this Act. First mortgages executed to Federal land banks or to joint stock land banks and farm loan bonds issued under the provisions of this Act shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation.
>
> "Nothing herein shall prevent the shares in any joint stock land bank from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State within which the bank is located, but such assessment and taxation shall be in manner and subject to the conditions and limitations contained in section fifty-two hundred and nineteen of the Revised Statutes with reference to the shares of national banking associations.
>
> "Nothing herein shall be construed to exempt the real property of federal and joint stock land banks and national farm loan associations from

either State, county or municipal taxes to the same extent according to its value as other real property is taxed."

Farm Loan Bonds Trust Investments.

By Section 27, Farm Loan Bonds issued under the Act by Federal Land Banks or Joint Stock Land Banks are made lawful investments for all fiduciary and trust funds, and may be accepted as security for all public deposits. Any member bank of the Federal Reserve System is authorized to buy and sell Farm Loan Bonds issued under the authority of the Act, and any Federal Reserve bank may buy and sell Farm Loan Bonds issued under the same, to the same extent and subject to the same limitations as are placed upon the purchase and sale by said banks of State, county, district and municipal bonds by Subdivision b, Section 14, of the Federal Reserve Act.

Receivership.

By Section 29, in the event of insolvency or default in the payment of any obligation, Federal Land Banks and Joint Stock Land Banks respectively are made liable to receivership at the direction of the Farm Loan Board.

Treasury Deposits in Federal Land Banks.

Section 32 authorizes the Secretary of the Treasury to make deposits for the temporary use of any Federal Land Bank out of money in the Treasury not otherwise appropriated, provided the aggregate of such deposits shall not at any one time exceed the sum of Six million dollars ($6,000,000).

B.

Extract from Annual Report of the Secretary of the Treasury (Hon. Carter Glass) for the year 1919, dated November 20th, 1919:

"The Federal farm-loan system has operated effectively and successfully during the past year, amply justifying the great purpose for which it was created and meeting the expectations of its advocates. The Federal land banks have continued to make loans to farmers at 5½ per cent. per annum, and the joint stock land banks at 6 per cent. All loans, as provided by the act, have been made on the amortization plan, the borrower making a fixed payment, annually or semi-annually, which is at least 1 per cent. in excess of the interest charge, such excess being applied on the principal. As the balance of the principal due decreases the proportion of this level payment absorbed by the interest charge correspondingly decreases and a constantly increasing balance is applicable to the extinguishment of the debt. This principle, while familiar to actuaries and statisticians, had not been applied in this country to individual mortgages to any appreciable extent prior to the enactment of the Federal farm-loan act in July, 1916. The great success of the farm-loan system has called attention to the advantages of this method of paying debts, and the application of the amortization plan to all mortgages, urban and rural, is now being actively urged by influential private organizations.

"During the 12 months ended September 30, 1919, loans were made by the Federal land banks to the farmers of the United States to the aggregate amount of $129,271,662, an increase of $10,742,839 over the corresponding period a year ago,

and making a total of loans by the Federal land banks from the inception of the system in March, 1917, of $261,175,346. The subjoined table indicates the amount of the loans made by each of the banks in the years referred to and in the aggregate:

District.	Federal land bank.	Loans made Oct. 1, 1917, to Sept. 30, 1918.	Loans made Oct. 1, 1918, to Sept. 30, 1919.	Aggregate of loans made from date of organization in March, 1917, to Sept. 30, 1919.
1.	Springfield, Mass...	$4,999,630	$4,738,200	$9,913,545
2.	Baltimore, Md.....	4,323,150	5,277,550	10,401,600
3.	Columbia, S. C.....	6,198,905	7,361,150	13,891,045
4.	Louisille, Ky.....	7,490,700	9,460,700	17,959,900
5.	New Orleans, La...	8,800,135	8,722,715	18,192,505
6.	St. Louis, Mo.....	8,166,065	12,149,270	20,895,940
7.	St. Paul, Minn.....	17,380,500	14,986,100	33,605,900
8.	Omaha, Nebr.....	14,418,050	20,267,450	35,390,290
9.	Wichita, Kans.....	10,292,922	9,045,000	23,311,800
10.	Houston, Tex.....	11,264,287	16,885,787	28,666,561
11.	Berkeley, Calif.....	7,315,800	6,019,400	14,065,400
12.	Spokane, Wash.....	17,878,679	14,458,340	34,880,860
	Total	118,528,823	129,271,662	261,175,346

"There have been 27 joint stock land banks incorporated by private capital under the terms of the act, with aggregate capital of $8,500,000. Nineteen of these banks were incorporated during the past year, and therefore can not be said to be, as yet, in full and active operation. The loans made by the joint stock land banks aggregate $41,787,359, which added to the loans of the Federal land banks makes a total of $302,963,705 lent to farmers by all of the banks composing the system. The banks of this character have grown very strikingly in number and in volume of business during the past year. Owing to the fact that they were not established until after the Federal land banks, and that for some time there were only a few in operation, their loans represent only 14 per cent. of the total, but during one or more recent months they have transacted as high as 30 per cent. of the whole volume of business of the system. Notwith-

standing this division of the field, the Federal land banks have done a larger volume of more desirable business than in the previous year, the membership of existing farm-loan associations has grown, and over 600 new associations have been organized.

"A very gratifying feature of the year is the remarkable improvement in the financial position of the Federal land banks. During the first year of their existence, and part of the second year, they necessarily operated at a loss. This was inevitable, and was anticipated by the proponents of the system and those who were familiar with the business. The 12 banks opened in the spring of 1917 with an aggregate capital of $9,000,000, of which $8,892,130 was subscribed by the Government and $107,870 by individuals. Before the close of the first year over $600,000 of this original capital had been absorbed by the excess of organization and current expenses over the scanty receipts of that period. By January 31, 1919, this amount had been made good out of earnings. Under the provision of the Federal farm-loan act that after subscriptions to capital stock by farm-loan associations shall amount to $750,000 in any Federal land bank, one-fourth of all sums thereafter subscribed shall be applied to the payment and retirement of the stock originally subscribed, eight of the banks had, up to November 15, 1919, paid and retired $1,198,890 of the stock originally subscribed by the Government, thereby reducing the amount of stock held by the Government on that date to $7,693,240. Notwithstanding such retirement of stock originally subscribed, the aggregate capital stock of the 12 banks increased from $9,000,000 at the start to $21,321,687 on November 15, 1919.

"Up to October 31, 1919, the net earnings of the 12 banks amounted to $1,278,394.41, of which $202,175 had been carried to reserve account, $332,923.98 distributed in dividends paid by five banks upon stock owned by farm-loan associations and

individuals, and $743,295.43 is still carried as undivided profits.

"Another gratifying feature, testifying alike to the security of the loans made, and ability and willingness of the borrowers to make payment, and the efficiency of the collection machinery of the banks, is the unusually small total of delinquencies. To September 30, 1919, payments due by borrowers to the banks had accrued to the amount of $12,666,313.61. Of this sum, the amount remaining unpaid on that date was only $172,456.72, or 1.4 per cent. of the total. Of that amount $86,816.60 was 30 days or less overdue, $25,182.05 from 30 to 60 days, $14,872.85 from 60 to 90 days, and only $45,585.22 over 90 days overdue. This record has been made notwithstanding widespread disaster to crops in several sections of the country.

"The Federal farm-loan act provides that 'the salaries and expenses of the Federal farm-loan board and the farm loan registrars and examiners * * * shall be paid by the United States.' The system is now so well established and is in such financial condition that this assistance from the Government, in the judgment of the Federal farm loan board, concurred in by officers of the banks, is no longer necessary or desirable. The board accordingly has recommended that beginning with the fiscal year 1921 its expenses be provided for by assessments against the Federal land banks and the joint stock land banks in proportion to their gross assets. Measures for this purpose have been introduced in both houses of the Congress and, should the plan be adopted, the Government will be relieved entirely from the payment of the expenses involved. To have put the system on such a basis in three years is a very gratifying and satisfactory result.

"The primary purpose of the Federal farm-loan system, as expressed in the title of the act creating it, was 'to provide capital for agricultural development.' The accomplishment of that purpose necessarily involved the possibility of an enhancement of farm-land values. In so far as such enhancement was based upon increased production or added

attraction to farm life, it was legitimate and desirable. Indeed, there were many sections of the country where, owing either to the exodus of young men from the farms to industrial pursuits in the towns, or to local and peculiar conditions, farm lands were selling at prices much below their intrinsic value as measured by productive capacity. Any enhancement in land values in these sections which might incidentally result from the operation of the Federal farm-loan system was a general public benefit, as tending to check the urban drift of population and stimulate the local production of foodstuffs. The Federal Farm Loan Board has had in view from the start, however, the importance of guarding the system from complicity in anything approaching speculation in farm lands or such enhancement in their values as would either make them more difficult for men of small means to acquire or add to the overhead cost of producing foodstuffs. The high prices realized by growers for their crops during the war period were naturally reflected in a general increase in land values, but the first indication of any rapid or speculative rise did not manifest itself until a few months ago, when it appeared in some sections of the Middle West. It was claimed, perhaps correctly, in a recent convention of private loaning agencies, that the advances in this section were justified and will be permanent. The Federal Farm Loan Board, however, has thought that in the public interest, and in pursuance of the policy of conservatism which they have always followed, it would be better to follow this movement at a safe distance than to be part of it. They, therefore, issued instructions under date of May 3, 1919, to the banks under their supervision that where sales had taken place within a year at prices materially in excess of previous values such sales were not to be taken into account in the appraisement of the land, and under date of July 7, 1919, that no loans in excess of $100 an acre were to be made on land used for general agricultural purposes, even where the appraisement was $300 or $400 an acre."

C.

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Treasury Department
Federal Farm Loan Bureau.

CONSOLIDATED STATEMENT OF CONDITION OF THE JOINT STOCK LAND BANKS AT THE CLOSE OF BUSINESS AUGUST 31, 1920.

Assets.

Net Mortgage Loans (Unpaid Principal)	$79,209,884.14
Accrued Interest on Mortgage Loans (uncollected)	1,455,543.40
U. S. Government Bonds and Securities	3,132,089.62
Accrued Interest on Bonds and Securities	48,472.31
Farm Loan Bonds on Hand (unsold)	15,584,200.00
Cash on Hand and in Banks	1,348,518.56
Accounts Receivable	86,285.74
Delinquent Amortization Instalments	57,937.14
Banking House	247,000.00
Furniture and Fixtures	33,266.00
Other Assets	387,127.18
Total Assets	$101,590,324.09

Liabilities.

Capital Stock Paid In	$8,352,750.00
Surplus Paid In	115,250.00
Reserve (from earnings)	127,601.61
Farm Loan Bonds Authorized	75,673,500.00
Accrued Interest on Farm Loan Bonds (unmatured)	1,249,988.74
Bills Payable (Money and Bonds borrowed)	14,990,065.95
Accounts Payable	365,372.63
Reserved for Interest on Farm Loan Bonds (matured but not paid)	60,665.02
Other Liabilities	632,160.29
Undivided Profits	22,969.85
Total Liabilities	$101,590,324.09

D.

(585)

Treasury Department
Federal Farm Loan Bureau.

CONSOLIDATED STATEMENT OF CONDITION OF THE TWELVE FEDERAL LAND BANKS AT THE CLOSE OF BUSINESS AUGUST 31, 1920.

Assets.

Net Mortgage Loans (Unpaid Principal)	$346,507,855.16
Accrued Interest on Mortgage Loans (uncollected)	6,208,828.31
U. S. Government Bonds and Securities	7,583,227.77
Accrued Interest on Bonds and Securities (uncollected)	94,819.36
Other Accrued Interest (uncollected)	75,088.32
Farm Loan Bonds on Hand (unsold)	3,855,000.00
Cash on Hand and in Banks	5,211,170.52
Accounts Receivable	44,098.92
Delinquent Amortization Payments	304,355.59
Banking House	151,494.14
Furniture and Fixtures	159,650.64
Other Assets	222,082.74
Total Assets	$370,417,671.47

Liabilities.

Capital Stock:		
United States Government	$6,832,680.00	
National Farm Loan Associations	17,502,667.50	
Borrowers through Agents	74,890.00	
Individual Subscribers	18,735.00	
Total Capital Stock		$24,428,972.50
Reserve (from earnings)		766,900.00
Farm Loan Bonds Authorized		331,350,000.00
Accrued Interest on Farm Loan Bonds (unmatured)		5,118,204.49
U. S. Government Deposits		5,950,000.00
Bills Payable (Money and Bonds borrowed)		500,000.00
Accounts Payable (Deferred payments on loans in process of closing)		94,764.71
Reserved for Interest on Farm Loan Bonds (matured but not paid)		97,222.13
Other Liabilities		522,849.98
Undivided Profits		1,588,757.66
Total Liabilities		$370,417,671.47

MEMORANDA.

Net Earnings to August 31, 1920		$3,517,694.68
Less Dividends paid to August 31, 1920		1,043,665.75
Carried to Reserve Acct. to August 31, 1920	$766,900.00	
Carried to Suspense Acct. to August 31, 1920.	118,371.27	
Carried to Undivided Profits to Aug. 31, 1920	1,588,757.66	
Total Reserves and Undivided Profits Aug. 31, 1920		2,474,028.93
Capital Stock originally subscribed by U. S. Government.		$8,892,130.00
Amount of Government Stock retired to August 31, 1920.		2,059,450.00
Capital Stock held by U. S. Government August 31, 1920		$6,832,680.00

E.

Extract from statement made by Mr. W. W. Powell, Secretary of the American Association of Joint Stock Land Banks, before the Committee on Banking and Currency of U. S. Senate, January 12, 13, 1920:

> "If the joint-stock land banks have any advantage in any particular over the Federal land banks, that advantage lies in the opportunity afforded to deal directly with the borrower.
>
> "It is interesting to note what are the results of having the two types of banks operate in the same field. The following shows the actual competition in the loans examined for all the joint-stock land banks by the Farm Loan Board to November 13, 1919:
>
> "Loans of $10,000 or more: Number, 2,278, for $38,911,464; average $17,000.
>
> "Loans of less than $10,000: Number, 3,869, for $16,853,730; average $4,300.
>
> "Total number, 6,147, for $55,765,184; average $9,000.
>
> "Percentage of loans under $10,000, 30 per cent. plus.
>
> "Total loans by Federal land banks October 1, 1919: Number, 103,672, for $271,317,000; average loans, $2,600 plus.
>
> "Now we come to the interest of the money lender. Approximately $9,000,000 have been invested in the stock of joint-stock land banks. These investors entered this particular field to conduct a farm-loan business under the supervision of the Government, not because it offered a large return —for the return is much smaller than in the unregulated farm-loan field—but because they assumed that the time had arrived when the Government was in earnest and contemplated providing the financial machinery which would make it possible for the farmer to get adequate and essential money at low rates, and because they assumed also that the provisions contained in the farm-loan act

were permanent in their nature. In a word, they assumed that the day of the farm-mortgage broker, with his high rates and excessive commissions, was ended. Accordingly they felt that as they would be compelled, sooner or later, either to retire from the field or to submit to regulation, it was well to enter upon the new order at once and to get their business adjusted at the earliest moment to the new and permanent conditions. These investors recognized that if they did not enter the farm-loan system as joint-stock land banks, those who did organize as joint-stock land banks would run the old mortgage broker out of business. They could have continued to operate as farm-mortgage bankers, if their only competition had been the Federal land bank with its new, mutual or co-operative credit plan; but they knew they could not continue at the old high rates of interest and with the old exorbitant commissions against the keener and more active competition of the privately owned joint-stock land banks.

"Now, with regard to the profits. Joint-stock land banks have no source of income other than from first-mortgage loans, from Government securities, and from premiums on the sale of their bonds. They can not charge the borrower a rate of interest in excess of 1 per cent. above the rate of their bonds bear. That limits the banks to a margin of 1 per cent. Under the law, joint-stock land banks cannot issue bonds in excess of fifteen times their capital. Thus, we see that from the making of mortgage loans, joint-stock land banks cannot legally derive a gross income in excess of 21 per cent. (all expense of operation must be paid out of this) on its invested capital; that it, 6 per cent. on the capital stock itself and 1 per cent. on each of the 15 turnovers of the capital through the issuance and sale of bonds, and this amount of gross income presupposes the continuous working of every dollar or capital all the time, an impossibility without question. The income from premiums on bonds sold is uncertain, when there is any

premium at all. Of the highest premium thus far received, 75 per cent. was absorbed in the cost of marketing the bonds, and about 12½ per cent. was absorbed in printing and other costs of issue.

"Out of its income, joint-stock banks must pay their operating expenses, including taxes (for, contrary to popular opinion, these banks are subject to certain taxes—State taxes on their capital stock, income taxes and revenue taxes on the notes on which they borrow money) and must build up the reserves required by law, before they can pay any dividends whatsoever.

* * * * * * *

"The right to issue tax exempt farm mortgage bonds is predicated upon a service to the general public.

"The Government's right to exempt such bonds from taxation can be exercised only in the interest of the general welfare. It is not as a subsidy to a particular class of farmers; it is an aid to agriculture, as a stimulus to production, that these bonds are exempted from taxation.

"All will agree that the long-term amortized loan could not be made available to the farmer excepting by the issue of bonds, and prevailing conditions in the money market show that a low rate of interest on these bonds can be assured only by exempting the bonds from taxation. If any great amount of farm loan bonds is to be sold, the sales must be effected in the market under conditions which will appeal to the investor. Farm-loan bonds, therefore, have to meet the competition of municipal bonds and other tax-exempt securities, of which New York City alone has a funded debt of $1,450,000,000 now totally exempt from taxes. If farm-loan bonds were to be subject to taxation, then they would have to bear a higher rate of interest, and the farmers would have to pay a correspondingly higher rate of interest. For this reason in particular, it was decided by the Congress that farm-loan bonds should be tax exempt.

"Farm loan bonds make a liquid security of the

farm mortgage. Heretofore the size or amount of a farm mortgage made it an unwieldy thing to handle in the market. The fact that the security could not be examined readily by other parties than those originally making the loan also interfered with its sale. But when the Federal farm loan act was passed and all farm mortgages were appraised by representatives of the Farm Loan Board, and values thus determined, safeguarded, and, in effect, guaranteed, it was possible to issue against these farm mortgages bonds of varying denominations to suit the convenience of investors. So that now, instead of an investor being asked to buy a $5,000 farm mortgage, and having to wait until he had $5,000 before he could make the purchase, under the new system he is asked to buy a $500 farm mortgage bond, or possibly a $100 farm mortgage bond, and he can buy it whenever he has the $100 or the $500. And all this makes of farm mortgages, for the first time in the history of this country, liquid securities that pass current as do the securities of municipal and other corporations.

"By this plan vast sums of money have been released for agricultural uses which never could have been made available had it not been for the fact that farm securities are now liquid and can be handled conveniently and with dispatch by banks and other investors. The effect of this has been to secure the farmer his money at greatly reduced rates of interest. The reduction in these rates already has been shown. The purposes of the farm loan act is being served. Capital is being provided for agricultural development. Rates of interest have been reduced. The farmer is getting his money cheaper and at relatively lower rate of interest than ever before."